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GENERAL HEADINGS.

Cases Reported this Week.

Current Topics.

The Meeting of The Law Society.

THE SPECIAL General Meeting of The Law Society, held on 25th January, which we report elsewhere, had some exceptionally interesting matter for discussion. Mr. JAMES DODD raised again the question of the establishment at the Law Courts of a Central County Court for the clearance of county court actions in the London district. As to the desirability of such a court there seems to be general agreement, and the only difficulty is in getting the Lord Chancellor or the Lord Chancellor's department to act. Possibly Lord HALDANE will now take the matter up. The grant to solicitors of the right of audience in all courts co-equal with that of barristers—also raised by Mr. DODD, and forcibly advocated by him in a letter which we print elsewhere—is by no means a subject of agreement, and it was negatived at the meeting by fifty-eight to thirty-two. A poll was duly demanded, and will be taken, and the result made known on the 22nd inst. We express our opinion on the question on another page. The change from item bills to lump sum bills of costs is, we believe, desired by solicitors with practical unanimity, but the progress of this reform also is checked by the *inertia*—if we may so call it—not of any particular Lord Chancellor, but of the succession of Lord Chancellors. And meanwhile, as we have several times observed, the report of Mr. Justice RUSSELL'S Committee is carefully withheld. Here, too, something may reasonably be expected of Lord HALDANE'S Chancellorship. At the same time changes of this kind should not depend on successions, rapid or otherwise, to the office of Lord Chancellor. Was it not Lord BIRKENHEAD who said that in such matters the work of the department was continuous? The Lord Chancellor may pass, but—to AMURATH an AMURATH succeeds.

The Lord Advocate and a Labour Ministry.

IT IS INTERESTING that Mr. RAMSAY MACDONALD'S only unsolved problem as regards the constitution of a Labour Ministry has been his inability to find a Scots Advocate to fill the important office of Lord Advocate. Of course, this is not so very surprising as it may seem, for the Scots Bar is a very small body; most first instance litigation north of the Tweed is commenced in the Sheriff Court, which has practically unlimited jurisdiction, and in which writers (*anglice*, solicitors) are the usual practitioners. In Scotland, curiously enough, the office of Lord Advocate is subject to the rule which in England applies to the Throne—there cannot be a vacancy by resignation, and each Lord Advocate remains such until the seals of office have been accepted by a successor. The reason is that in Scotland prosecutions are laid, not in the name of the King, but in that of the Lord Advocate, so that a vacancy in the office would terminate all criminal business. Moreover, the Lord Advocate, or one of his four Advocates-Depute, who correspond to English Treasury counsel, authorizes all prosecutions; a private person cannot prosecute without the authorization, by mandate or otherwise, of the Lord Advocate, and this has only been given twice in the recorded legal history of Scotland. The Lord Advocate, too, is nominally a member of the Court of Session; this consists of the Lord President, Lord Advocate, Lord Justice-Clerk, and eleven Lords Ordinary; but no Lord Advocate ever acts as a judge. Again, curiously enough, Lords of Session—and presumably the Lord Advocate, although this is doubtful—need not be advocates: any legal practitioner or graduate in Laws can be appointed. But this was last done in 1662, at the Restoration, when the Scots Law—displaced by CROMWELL'S Judges—was restored and, owing to loss of records, it was found necessary to appoint the most learned lawyer of the day as Lord President to restore memory of the ancient laws of the country. This was DALRYMPLE OF STAIR, then a Professor of Scots Law in Glasgow University. A month ago it was rumoured in Parliament House that, failing acceptance of office by some distinguished advocate, Mr. RAMSAY MACDONALD contemplated the revival of this ancient right by offering the appointment to a Scots Professor in the University of Glasgow, who is a writer; but whether either party to this rumoured arrangement has really considered it favourably, is a matter of the greatest doubt.

The Operation of the New System of Conveyancing.

A CORRESPONDENT, whose letter we print elsewhere, usefully calls attention to some questions of practical difficulty which are likely to arise in the working of the new system of conveyancing. Probably most students of the Law of Property Act, 1922, have found it by no means easy to appreciate the exact operation of s. 3 (6) which he quotes. This depends on the scheme of legal and equitable interests, and on the extended facilities for overreaching equitable interests by means of trusts for sale and settlements. It is quite possible that, as our correspondent points out, the sub-section, by requiring the consent of a person entitled to an equitable interest having priority to a legal estate, may cause that interest to be brought on the title, and this is opposed to the scheme of the Act. Since, however, that scheme is now being reproduced in the Consolidation Bills, and may possibly undergo some change, it is better to wait until those Bills have been published before any further detailed consideration is given to the matter. With regard to second mortgages, it is true that these will in future be legal term mortgages; but it should be possible, by requiring indorsement on one of the prior title deeds, to secure that a purchaser shall have notice. Here, too, it will be convenient to wait and see whether any provisions designed to meet the point will be contained in the Consolidating Bills.

The Young Offender.

WE WERE interested on Wednesday in an article in the *Morning Post*, "A Young Offender: the Modern Method of Reform." It narrated the capture of JOHNNIE DALTON, aged ten, past midnight in a London suburb, as he was wriggling beneath the iron gates of a factory:—

> A sudden light made him look up and blink. Towering above him he saw a policeman with a bull's-eye lantern. The youngster would have slipped back again, but a strong arm seized him, drew him out, and set him on his feet.
>
> "What are you doing here, my boy?" asked the policeman.
>
> "Nuffink, sir."
>
> "Come, come," was the kindly answer. "I think we know each other. You were helping some men to enter the factory, but they were disturbed and left you in the lurch."
>
> "Yes, sir."
>
> "Well, you had better come along with me."

And so to the Pentonville Remand Home for Boys, and "thus there began for him a series of new experiences, which changed his life, at the moment so dark and unfortunate." "The spotless cleanliness of the Home, the ample meals, the discipline of class instruction, and the kindly words of the superintendent pierced JOHNNIE'S cloudy intelligence like light in darkness." There followed after a few days his appearance at the Children's Court, and as the result his entry into an Industrial School. This episode we take the liberty of re-printing on another page. And owing to the methods of the school, "to-day he is a sturdy little fellow, proud of his name, JOHNNIE DALTON, and with every promise of being a credit to himself and to his country." That is one picture. But it so happens that on 9th January *The Times* reproduced from its issue of that day, in 1824, a very different picture. This also we take the liberty to print on another page. The contrast is striking. It may be that the story in the *Morning Post* is a little idealistic. Even an Industrial School is not always an Earthly Paradise. But certainly in the treatment of the child offender we are getting on.

The Filing of a Preliminary Act in Admiralty.

IN AN ADMIRALTY action, we hardly need say, there exists a pleading, supplementary to the normal Statement of Claim, Defence, Reply, etc., which is not known elsewhere—namely, the "Preliminary Act." This is filed by each party *before* he sees the other's pleadings, and sets out his version of certain important matters of fact—latitude and longitude of the locale, strength and direction of the wind, directions and speed of courses, lights shown, signals, and the like. Now in *The Saxicava, Times*, 30th ult., a question of practice, the importance of which will be obvious, has arisen in connexion with the filing of the "Preliminary Act." In this case a collision occurred on 12th September, 1923, between the Greek steamship *Despina* and the British steamship *Saxicava*. Next day, the Greek owners, as plaintiffs, commenced an action *in rem* in the Gibraltar Vice-Admiralty Court, but withdrew the action after some correspondence which disclosed clearly the fact that the British owners relied on a counter-claim for damages. On 14th September, two days after the collision, the British owners commenced an action *in rem* in England against the owners of the *Despina*; but this action proved abortive, as the vessel had sunk and her owners were foreigners who on their personal character were outside the jurisdiction of such an action. But on 17th September, the Greek owners of the *Despina* commenced proceedings *in personam* in England against the British owners of the *Saxicava*. The defendants desired to counter-claim, but on 5th January of this year the plaintiffs gave notice of discontinuance; they had thus discontinued—first in Gibraltar, and afterwards in England—two actions in which the British owners could have counter-claimed. The defendants, anxious to have the issue between the parties tried out, then applied to the Registrar to order the filing of the Preliminary Act by the parties; this in substance is refusal of leave to discontinue, and would have enabled the defendants to bring their counter-claim to trial. This raises the question whether a counter-claim can be set up notwithstanding that there is no claim before the court, a point considered previously, but not finally decided, in *The Salybia*, 1910, P. 25, and in *Whiteley's Case*, 1900, 1 Ch. 365. The President now held that a counter-claim cannot be proceeded with after abandonment of the action, unless there are pleadings raising a claim; therefore a Preliminary Act cannot be ordered.

Counter-claims and the Judicature Acts.

THE QUESTION whether counter-claims can be set up in a High Court action, after the plaintiff has discontinued before pleadings have been ordered, is not, of course, in any way peculiar to the Probate, Divorce and Admiralty Division. It arises out of s. 24 of the Judicature Act, 1873, which in effect substituted counter-claims for cross-actions, and the Rules of the Supreme Court made to give effect thereto. By Ord. 21, r. 16, it is provided that "If, in any case in which the defendant sets up a counter-claim, the action of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with." This is not conclusive, however, because these words obviously contemplate an action which has proceeded so far that a Statement of Claim has been delivered (or in Ord. 14 and Ord. 30 proceedings expressly dispensed with by Order of the Master) and a Counter-claim delivered or ordered in reply. It does not affect the case where discontinuance takes place before pleadings have been delivered or even ordered. Again, Ord. 19, r. 3, provides: "A defendant in an action may set-off, or set up by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a cross-action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross-claim . . ." Ord. 21, r. 10, directs that a counter-claim shall be set up in the defence. These provisions seem to indicate that a counter-claim can only be set up by way of pleading and in due course of pleading, so that it is not available to a defendant, where the plaintiff has discontinued before pleadings. Mere intimation of the defendant, by letter or otherwise, that he has a counter-claim and intends to set it up, can scarcely be regarded as sufficient.

What constitutes Matrimonial Desertion.

THE WIDE LEGAL meaning attributed to the word "desertion" in relation to matrimonial differences is well illustrated by the decision in the recent case of *Thomas* v. *Thomas*, reported elsewhere, where the Court of Appeal affirmed a decision of the Divisional Court of the Probate, Divorce and Admiralty Division, which had held that the justices were right in finding that desertion had been proved under the following circumstances, and in making an order under the Summary Jurisdiction (Married Women) Act, 1895. The marriage in question took place in 1914, and the husband from time to time ill-treated his wife. In June, 1922, he quarrelled with her and ordered her to leave the home. Her parents warned him that if she went she would not return, but he repeated the order and told her that she might take two of the children with her. On the following day he repented, and then, and on subsequent occasions, begged her to return. The Master of the Rolls, in the course of his judgment, said that the justices had acted rightly in considering the conduct of the husband as a whole, and dismissed the appeal. Reference was made to the illuminating judgment of GORRELL BARNES, J., in *Sickert* v. *Sickert*, 48 W.R. 266, 1899, P. 278. In that judgment the material meaning of "desertion" will be found lucidly expounded. That learned judge said: "In order to constitute desertion there must be a cessation of cohabitation and an intention on the part of the accused party to desert the other. In most cases of desertion the guilty party actually leaves the other, but it is not always necessarily the guilty party who leaves the matrimonial home. In my opinion, the party who intends bringing the cohabitation to an end, and whose conduct in reality causes its termination, commits the act of desertion. There is no substantial difference between the case of a husband who intends to put an end to a state of cohabitation, and does so by leaving his wife, and that of a husband who, with the like intent, obliges his wife to separate from him."

Wilful Abandonment of Conjugal Society.

THE PRESENT DECISION seems to stretch this somewhat paradoxical meaning of the word "desertion" further than has been done in previous cases. To the lay mind the word doubtless always connotes departure. Thus mutineers would hardly be accused of deserting their ship, if, after casting the captain and officers adrift, they themselves proceeded on the voyage. Moreover, such meanings are given to the verb "desert," in dictionaries such as that of Dr. JOHNSON and the New English Dictionary, as "forsake," "leave," "abandon," "depart from." When, however, we try to find out exactly what it is that is being abandoned, we are aided by the legal definition of "desertion" in the latter dictionary, *i.e.*, "wilful abandonment of the conjugal society, without reasonable cause, on the part of a husband or a wife." Having appreciated that it is the abandonment of an abstract and not a concrete entity: *i.e.*, the "conjugal society," and not the "home"—which constitutes the desertion, we no longer see any paradox in the application of the term to the conduct of a man who, after treating his wife with persistent cruelty, drives her from home, even though he afterwards repents and begs her to return.

A Novelty of Bar Etiquette.

AMONG THE QUESTIONS pronounced upon last year by the General Council of the Bar, and summarized in their recent annual report to the Bar under Etiquette, there is one which sounds rather like an extract from a Gilbert and Sullivan Opera. It seems that some newspaper inserted a statement to the effect that a certain barrister's name, as published in press reports of cases in which he appeared, was not his true name. The barrister sent a notice to the paper stating that it *was* his true name, and signed it from his professional address. Someone complained of this as "advertising," but both the barrister's Benchers and the Bar Council have naturally held that it is not. The Bar Council's report, however, expresses its decision in a solemn formula, which in substance says that a barrister is not guilty of a breach of professional etiquette in correcting a press error as to his name!

High Court Audience for Solicitors.

WE hope that in voting on the poll demanded by Mr. DODD on his resolution in favour of solicitors having the right of audience in the High Court, which was defeated in the Law Society's Hall at the last meeting, no solicitor will be led away by the attractive idea of sharing a privilege now enjoyed by the Bar without making concessions that are certain to be asked for in return.

There can be no doubt that any such proposal would be strenuously opposed by the Bar, and, if it should be granted, would only be granted in consideration of barristers having the same rights as solicitors.

Solicitors already have the right of audience in the County Court, the Police Courts, all arbitration tribunals and in Chambers in the High Court, and yet we know that a very great number of these cases are entrusted to barristers, a clear indication that in the opinion of many solicitors it is better for the clients that these cases should be so conducted. It will be time enough to claim a share in the privileges of the Bar when it is found that solicitors exercise their own privileges to the full.

The claim made by Mr. DODD's motion, if carried, would involve the loss of the substance of the privileges of solicitors for the shadow of an extension of their rights to the High Court, a very doubtful advantage which would only in a very few instances be made use of.

The arguments based on the practice in America and the Colonies are misleading, for it is well known that in these cases the work of the solicitor and the barrister is kept distinct.

This motion, it must be remembered, is nearly allied to the motion in favour of complete fusion of the two branches of the profession, which was submitted to a poll of the Law Society in 1919, and then defeated by an overwhelming majority, and it is a matter of regret, we think, that the members of the Society should now be put to the trouble and expense of a poll on this kindred subject.

The Law Society are doing much to protect solicitors from the insidious attacks that are constantly being made on their privileges, and we venture to think that the members of the Law Society would be better engaged in endeavouring to protect their own rights rather than in making an attack on the rights of others. We hope the result of the poll will confirm the decision of the meeting by rejecting the proposal.

Purchaser's Liability for Interest when Completion Delayed.

V.

(*Continued from p.* 317.)

(*c*) As to the Rate of Interest to be Paid and as to who is Entitled to the Interest made by the Deposit.

In Dart's Vendors and Purchasers, 7th Ed., p. 650, it is stated that where there is no special agreement, interest, when payable, is payable at law at such rate, not exceeding £5 per cent., as may be allowed by the jury, and in equity, now, as a general rule, at the rate of £3 per cent. per annum; but as unpaid purchase money is a debt, it seems the rate may still be £4 per cent. This is somewhat vague!

It is submitted that at the present time the rule as to the rate of interest to be paid by a purchaser, when he has to pay interest, is definitely £4 per cent. per annum. Stirling, J., in *Re Lambert*, 1897, 2 Ch. 169, said that £4 per cent. is the "rate of interest which is charged according to the rules on *debts* which are provable in administrations, and as to which there is no special provision as to their bearing interest. The rule as to the interest payable on debts has not yet been altered, and that remains the rate at which interest is charged on debts." This statement was referred to with approval in *Re Whiteford; Inglis* v. *Whiteford*, 1903, 1 Ch. 889. Interest on purchase money would seem to be governed by the same rule.

As regards compound interest it is not the practice of the court to allow anything in the nature of compound interest (*Silkstone and Haigh Moor Coal Co. and Edey*, 1900, 1 Ch. 167; *Re Lord Magheramorne's Estate*, 1901, W.N. 152).

There is one special case which should be mentioned, namely, where a purchaser is purchasing the equity of redemption in property. If in such a case the purchaser takes possession before the date fixed for completion, the interest which will be due from him to the vendor on completion will be set off against the interest on the mortgage which the vendor will have to allow the purchaser, even although the interest on the mortgage be at a higher rate than the interest payable under the contract (*Wallis* v. *Bastard*, 1853, 4 D.M. & G. 251).

As regards any interest made by the deposit, it is stated in Williams' Vendor and Purchaser, 3rd Ed., pp. 27 and 28, in effect, that on London sales it is usually provided that the deposit shall be paid into the hands of the auctioneer, but that on country sales the vendor's solicitor is usually appointed to receive it. But that whenever the auctioneer or the solicitor receives the deposit as a stakeholder, and not in the character of agent of one of the parties, he is entitled to retain for his own use any interest made by the investment of the money whilst it remains under his control. See also the cases cited, namely, *Wiggins* v. *Lord*, 1841, 4 Beav. 30; *Hall v. Burnell*, 1911, 2 Ch. 551.

(*d*) As to whether a Purchaser is Entitled to Deduct Income Tax from Interest payable by Him to his Vendor.

Mr. Konstam in his book on the Law of Income Tax, second edition, published in 1923, states quite clearly that in his opinion a purchaser can do so.

Before the passing of the 1918 Income Tax Act it was generally understood that the question depended upon the proper construction of s. 40 of the 1853 Income Tax Act, as amended by the Revenue (No. 1) Act, 1864, s. 15, the material part of which is as follows: "Every person who shall be liable to the payment of any . . . yearly interest of money . . . as a personal debt or obligation by virtue of any contract, whether the same shall be received or payable half-yearly or at any shorter or more distant periods, shall be entitled and is hereby authorised, on making such payment, to deduct and retain thereout the amount of the . . . income tax . . . chargeable . . . upon or in respect of such interest . . . during the period through which the same was accruing." The words in the section which raised the difficulty which had to be decided by the court were "yearly interest of money." It was held that these words meant interest which *may* become payable at a future date. For instance, if a banker made a loan to a customer on the terms that the principal and interest were to be paid in three months' time, it is obvious that a definite three months' interest could not be "any yearly interest of money," but, interest on purchase money, although not likely to go on for a year, yet *might* do so, and consequently it was held that it came within the words of the section: see *Bebb* v. *Bunny*, 1854, 1 Kay & J. 216; *Goslings and Sharpe* v. *Blake*, 1889, 23 Q.B. Div. 324; *Re Craven's Mortgage*, 1907, 2 Ch. 448.

So that, up to the date of the passing of the 1918 Income Tax Act, it was perfectly clear that a purchaser was entitled to deduct the tax.

We now come to the 1918 Act. This Act repealed s. 40 of the 1853 Act. If the Act had re-enacted s. 40 word for word, no possible doubt could have arisen. It does seem a pity that when a section has received careful judicial explanation and the effect of the section has been definitely settled, it should not be adopted *verbatim* in a consolidation Act.

The nearest provision in the new Act to s. 40 of the old Act is r. 19 (i) of the General Rules applicable to all the schedules to the 1918 Act. The material part of this rule is: "Where any yearly interest of money . . . (whether payable . . . or as a personal debt or obligation by virtue of any contract, or whether payable half-yearly or at any shorter or more distant periods), is payable *wholly out of profits or gains* brought into charge to tax, no assessment shall be made upon the person entitled to such interest . . . but the whole of those profits or gains shall be assessed and charged with tax on the person liable to the interest . . . and the person liable to make such payment, whether out of the profits or gains charged with tax or . . . shall be entitled, making such payment, to deduct and retain thereout a sum representing the amount of the tax thereon at the rate or rates of tax in force during the period through which the said payment was accruing due."

The words of difficulty in the above rule are "payable wholly out of profits or gains."

The learned Editor of "Dowell on the Law of Income Tax," 8th Ed., p. 599, says, "Section 40 of the Income Tax Act, 1853, is repealed by the present Act, but the following provision—the portion quoted above—of that section is not reproduced in this Act." The following statement also appears on the same page: "With reference to the above s. 40, Lord Watson said, in *Gresham Life Assurance Society* v. *Styles*, 1892, A.C. 309, that it had no application to annual payments payable out of profits or gains."

If the words had been "payable wholly out of *the property*, profits or gains," there could have been no doubt that they would apply to interest on purchase money. These are the words used in s. 1 of the 1918 Act, when enacting that income tax shall be charged "in respect of all property, profits or gains respectively comprised in the Schedules A, B, C, D and E." It might be thought that a distinction was here drawn between rent or interest in respect of property and profits and gains in a business.

But Lord Davey, in *London County Council* v. *Attorney-General*, 1901, A.C. 39, referring to the earlier Act, said, "I construe the words 'profits or gains brought into charge by virtue of this Act' as including all annual income charged with the tax under any of the Schedules and not confined to profits charged

under Schedule D." And Lord MACNAGHTEN in the same case said, "And it is to be observed that the expression 'profits or gains' which occurs so often in the Income Tax Acts, is constantly applied without distinction to the subjects of charge under all the Schedules."

Finally we come to Mr. KONSTAM's statement of the law on pp. 187 and 188 of his book on "The Law of Income Tax." He says that the right to deduct tax on interest paid out of taxable profits applies to yearly interest only. Then he explains what "yearly interest" means, and then he says, "Tax is, therefore, deductible on paying interest on the purchase money of real estate after the date fixed for completion." And in a note he refers to *Bebbs* v. *Bunny*, already referred to. He also in a note says, "General Rules, r. 19 (i); this rule corresponds with s. 40 of the Income Tax Act, 1840." He does not, however, refer to the difference in the wording between r. 19 (i) of the 1918 Act and s. 40 of the 1853 Act. He does not say also why he limits the rule to "real" estate. There seems no reason why it should not equally apply to leasehold property.

On payment of purchase money *into court*, the deduction of tax will not be allowed, on the ground that payment into court is not payment to the party as against whom the purchaser is entitled to deduct the tax (*Holroyd* v. *Wyatt*, 1847, 1 De G. & S. 125; *Bebb* v. *Bunny*, 1854, 1 Kay & J. at p. 219).

L. E. E.

(*Concluded.*)

Reviews.

Company Law.

ONE THOUSAND QUESTIONS AND ANSWERS ON COMPANY LAW. By HENRY ALLEN ASHTON, Managing Director, The London Financial Service, Ltd. The London Financial Service, Ltd. 5s.

Mr. Ashton's endeavour has been to compress as much information as possible on Company Law into the proverbial nutshell. The questions raise a great number of points on which business men may desire guidance, and the answers are given with commendable brevity and clearness. They are founded on an extensive and minute examination of statutes, cases, and the leading text books, and the shortest answer sometimes embodies an exceptionally important point of law. To question 662: "Is a bonus in the form of fully-paid shares income for the purpose of super-tax," the answer is "No," but that short answer of course depends on one of the most interesting of the recent decisions of the House of Lords. Mr. Ashton rarely gives any reference to cases, and the reader can exercise his ingenuity by tracing the answers to their sources. This can be done, for instance, in a bonus question (103), one to which the answer cannot be given quite so shortly: "When a company declares a bonus, is it to be treated as capital or income?" The answer is "Payments out of accumulated profits of past years are not necessarily capital; the inquiry whether they have been converted into capital or not is one of fact depending upon the circumstances of the case." Quite as good an answer as can shortly be given, and, like the other answer just quoted, it is based upon a well-known decision of the House of Lords; but for practical application it would be necessary to know in what way particular circumstances affect the result. That, as readers of the law reports know, is a matter which is continually receiving judicial elucidation. There is another bonus question (216) with a monosyllabic answer: "Can shares of a company be issued by way of bonus or gift?" Mr. Ashton answers "No"; but this looks as though the expression "bonus share" was meaningless. No doubt the bonus share here is one issued solely as a gift.

Decisions of the House of Lords are responsible for a good many of the answers, but this is because nearly all the fundamental principles of Company Law have at some time or other been laid down by that tribunal. "What," runs another question (487), "is the real meaning of the phrase 'such charge is to be a floating security.'" The answer, perhaps, evades the point, and shows rather how a floating security is created than its nature when created, but it suggests a well-known judgment of Lord Macnaghten's. We should say, however, that another question (28) asks as to the difference between a fixed and a floating debenture. How a landlord can get his rent in a winding up is the subject of five questions (571-575), and company practitioners will know that here again Mr. Ashton must have had recourse to well-known decisions. No one, we suppose, could ask and answer a thousand questions on Company Law without inviting criticism, and when we read (question 666) that a "balance order" is "an order of the Court for the collection of assets in lieu of an action," this seems hardly consistent with the more correct answer to question 223, "What is the proper method of enforcing calls in a voluntary or compulsory winding up?" namely, "By obtaining an order known as a 'balance order.'" Sometimes the questions are rather practical than legal; *e.g.*, "864. What is the principal object of a reconstruction? The raising of further capital." And sometimes they suggest a conundrum, such as "706. Can two successive Special Resolutions be passed in three meetings?" The answer is "Yes," but it is left for the ingenious secretary to arrange. Question 899 "Is the statement that something will be done a statement of fact," enables Mr. Ashton to quote Lord Bowen: "The state of a man's mind is as much a matter of fact as the state of his digestion." Recurring to monosyllabic answers and House of Lords decisions, we may cite question and answer 923, "Are one-man companies legal? Yes." The book is interesting and informing, but Mr. Ashton does not profess to have followed any scheme of arrangement. For reference to particular points he leaves the reader to rely on the index.

Books of the Week.

Licensing.—Paterson's Licensing Acts. By the late JAMES PATERSON, M.A., Barrister-at-Law. Being the Licensing (Consolidation) Act, 1910, The Finance (1909-10) Act, 1910, The Licensing Act, 1921, and the Extant Provisions of the Licensing Acts from 1830 to 1902. Together with the Relevant Emergency Legislation of 1914-18, etc., etc., with Forms. Thirty-fourth edition. By HARRY BAIRD HEMMING, LL.B., Barrister-at-Law, and S. E. MAJOR, Junr., Solicitor. Butterworth & Co. 22s. 6d. net.; thin edition 3s. 6d. extra.

Criminal Law.—Criminal Appeal Cases. Edited by HERMAN COHEN, Barrister-at-Law. 12th, 19th, 26th November, 3rd, 10th, 17th, 20th, 21st December, 1923; together with Indexes to Vol. 17. Sweet & Maxwell, Ltd. 12s. 6d. net; prepaid subscription to Vol. 17, £2 net.

Law Quarterly Review.—Edited by A. E. RANDALL, Barrister-at-Law. January, 1924. Stevens & Sons, Ltd. 6s. net.

Correspondence.

Solicitors and Counsel.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Members of the Law Society in the provinces will have an opportunity directly to vote on a question of vital interest to our profession, and I venture to hope they will use their votes—for or against—in order that the decision may be representative of the Society as a whole and not merely of the London meeting.

My proposal is not for fusion. Personally I am not in favour of fusion. I may possibly seem old-fashioned, but I am not in love with American institutions, and would prefer to retain the Bar as part of our legal system. However, this is no reason why solicitors should not be accorded audience in all courts co-equal with counsel. The Bar would remain as it is to-day, except that its members would become specialists. They would still be needed as consultants, as draftsmen, and as advocates in cases of consequence, and their prestige would enormously gain, because only men good at their job would get the work.

It is suggested against my proposal that barristers would rise up in their fury and demand all sorts of encroachments on the privileges of solicitors. Well, these are not many. Almost every position of value in the law is already the perquisite of the Bar, and barristers who are envious of us can easily become solicitors if they wish to. There does not seem to have been any great convulsion in the law when solicitors were first admitted to audience in the county courts and in bankruptcy. On the contrary the county court system works without injury to the Bar, and I am convinced that even if solicitors were permitted audience in the High Court as in the county court, the Bar as a profession would be rendered very much more attractive than it has been in the past, because of the new stimulus to conserve its prestige and power.

It will be noted that my proposal is not made in the interest of either solicitors or of the Bar, but in the interest of the public. Nevertheless I have long been of opinion that the speeding up and cheapening of litigation would be to the interest of the profession as well. It is a cruel penalty—the penalty of costs—to be visited on anyone plucky enough to fight a cause he believes in, particularly when encouraged so to do by his legal advisers. Of late years costs have been more than doubled, and even in the

county courts, which were supposed to secure justice for all with a fixed scale, the tendency of late has been towards an increase of many of the items, with the result that an ordinary possession or compensation case (adjourned possibly once or twice for want of time) can be worked up by means of counsel's fees, refreshers and witness fees to £50 and even more on either side.

Practitioners in the country feel the burden most, because their clients in many cases are either desperately poor or desperately stingy owing to the cheeseparing way in which they have made their money. Many a just cause would go to the assizes or to appeal if it were not for the prohibitive cost. If only the solicitor could argue the case, this would give the client confidence to proceed. Instead of which counsel has to be briefed, and, whether he does his work well or ill, there is always the nervous anxiety of his having to send a substitute, or of vital points being missed or slurred. The penalty in many cases is worse for the solicitor than for the client. How often have we said to ourselves, if only we could have had the argument of the case in our own hands it might have brought us hundreds of pounds in costs. This, therefore, is my proposal, and I appeal to the London members who never go near a police court or a county court to stand up for their professional clients in the small provincial towns with whom advocacy is their livelihood. The Bar would still get plenty of work, and clients would be free to choose who they would have to do the argument for them. It is ridiculous that when counsel fails to turn up, the solicitor can only be permitted to whisper excuses and put up the client to conduct the case himself. Country practitioners may possibly be able to initiate the new procedure by inducing magistrates in Quarter Sessions to pass resolutions admitting solicitors to audience.

I look forward myself to the time when all causes will be decided in county courts and at Petty Sessions, with the High Court as a court only of appeal, but when I once ventured to make this suggestion to a Royal Commission the chairman gave such an obvious gasp that I realised my proposal was a quarter of a century before its time.

JAMES J. DODD.

11, New-square,
Lincoln's Inn, W.C.2.
29th January.

Transfer of Shares by an Executor to Himself.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Referring to the discussion which has recently taken place in your Journal on this subject, it may interest you to know that we have recently had a case where a well-known limited company in the City required our client, an executrix, to sign a memo. in the following form, viz. :—

I the undersigned being the Executrix of the Will of deceased of which Probate was duly granted to me on the by the Probate Registry hereby request you to register me as a Member of the Company and as absolute owner in respect of the Preferred Stock in your Company now standing in the name of the said deceased in the Register of Members of your Company.

HOWE & RAKE.

22, Chancery Lane, W.C.
29th January.

The Law of Property Act, 1922: Equitable Interests and Mortgages.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Can you inform your readers of what the effect of s. 3 (6) of the Law of Property Act, 1922, is likely to be? This sub-section says that "where any equitable interest, . . . to which the section applies, has priority to any legal estate which is paramount to the trust for sale or settlement, nothing contained in the section shall enable such interest . . . to be overreached to the prejudice of the person in whom the same is vested without his consent." Jointures in future will always be equitable interests, and when the portions term in a settlement has been mortgaged to secure portions actually raised, and the mortgagee has called upon the estate owner to secure the mortgage by the grant of a legal term, we shall have apparently a state of things to which the sub-section applies. My point is that, as the jointure occurs only in the "trust deed" and not in the "vesting deed," it will be necessary to put the former on the abstract of title, whereas it seems clear that only the "vesting deed" is intended to be abstracted.

SECOND MORTGAGES.

What precisely will be the position of a purchaser of land subject to a mortgage, when there is also a second mortgage of which he has no notice? At the present time the second mortgage is an equitable one, and if the purchaser has no notice of it, he can protect himself by getting in the legal estate. After the Act comes into operation, second and subsequent mortgages will in most cases be *legal* terms. Will the purchaser be able to protect himself by keeping alive the first mortgage, when he pays it off? I suggest that many of your readers would be grateful if you could see your way to giving them another series of the instructive and interesting papers on the Act which you gave them about a year ago. In those articles the new method of effecting settlements of land and the vesting of the legal estate on the enfranchisement of copyholds were only just touched upon.

REAL PROPERTY STUDENT.

[We are obliged for our correspondent's letter. We deal with it under "Current Topics." As soon as the Consolidating Bills are available, we hope to take up again the consideration of the new system.—Ed., *S.J.*]

Rent Restriction Acts—Calling in of Mortgages—Mortgagee in Possession.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—I recently acted for a purchaser on a purchase from mortgagees in possession, and I asked for an assurance that the mortgagees were in possession on the 25th March, 1920: Act of 1920, s. 7, prov. (i).

The vendors, who are themselves solicitors, gave me the assurance required, but contended that my requirement was unnecessary, having regard to s. 2 (1) of the Act of 1923.

Is this contention well founded? I cannot think it is. The last-mentioned section begins "When the landlord," and the word "landlord" seems very inappropriate to describe a mortgagee as such.

Moreover, the following clauses of the section indicate that it was tenancies, and not mortgages, that the draughtsman had in his mind.

W. H. W.

London, W.C.2.
29th January.

[Section 2 (1) of the 1923 Act requires that there shall be a "landlord" in possession at the passing of the Act, or coming into possession afterwards, and possession means actual possession. "Landlord" connotes "tenant," and the provision implies that there has been a tenancy under the landlord, and that this has come to an end and the landlord has regained actual possession. Section 7, prov. (i), of the 1920 Act contemplates a position of affairs which might be the same—where the mortgagee has let the house and then resumed actual possession—but will usually be different. The possession under prov. (i) is not necessarily actual possession, but also receipt of rent, and we agree with our correspondent that a mortgagee exercising his power of sale in reliance on possession on 25th March, 1920, should establish to the satisfaction of the purchaser that he was then mortgagee in possession.—Ed., *S.J.*]

Custody of Title Deeds to Leaseholds.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—I shall be obliged for an opinion as to whether a tenant for life of *leaseholds* may require the trustees of the settlement to hand him the title deeds.

Mr. Justice Swinfen-Eady in *Wheeler* v. *Tootell*, W.R. 603, 23rd July, 1903, says :—

"A tenant for life of personalty is not entitled to come and ask for the title deeds of the property."

It is not clear whether leaseholds would be regarded as realty or personalty for this purpose.

TRUSTEE.

21st January.

[For this purpose leaseholds rank as real estate. The tenant for life has the custody of the title deeds because he has the control of the estate. Since the Settled Land Act, 1882, this control has been vested on his statutory powers: *Re Wythes*, 1895, 2 Ch. 369; *Re Money Kyrle*, 1900, 2 Ch. 839; and this reason applies to leaseholds as well as freeholds. But even before that Act, a tenant for life was put in possession of the title deeds of leaseholds on proper terms as to their security: *Lady Langdale* v. *Briggs*, 8 D.M. & G. 391, 416, 419.—Ed. *S.J.*]

CASES OF THE WEEK.

Privy Council.

WELDEN *v.* **SMITH (representing THE SOUTH AUSTRALIAN GOVERNMENT).** 22nd January.

COLONY—PUBLIC AUTHORITY—EXERCISE OF STATUTORY POWERS—OBLIGATION TO TAKE REASONABLE CARE—NEGLIGENCE—AGENTS.

The Government of South Australia may be made liable for loss occasioned by the negligence or want of reasonable care of their servants and agents in the execution of the duties of the Government under the Wheat Harvest Acts, 1915-17 of South Australia.

By the Wheat Harvest Acts, 1915-17 of South Australia, any owner of wheat might deliver his wheat to the Government for sale on his behalf, and the net proceeds of all wheat so sold were to be divided among the owners in proportion to the amount of wheat delivered by them; but in order that an owner delivering wheat of fair average quality should not suffer by having his wheat pooled with inferior wheat, a deduction was to be made in respect of any inferior wheat. The result was that, subject to this provision for the protection of contributors of good wheat, each owner received for his wheat a price contingent on the aggregate price obtained for the whole. The Acts empowered the Minister of Agriculture to appoint companies, firms or individuals to act as agents for the Government in receiving, storing, protecting and delivering the wheat. The appellant, an owner of wheat, delivered to the Government of South Australia his harvest, and received on account of the price payable to him a sum of 2s. 6d. a bushel, but the balance had not yet been settled. On 29th April, 1921, the appellant, under Ordinance No. 6 of 1853, presented to the Governor of South Australia a petition, in which he alleged that by reason of the negligence and carelessness of the Government, and its agents, large quantities of the wheat delivered to it were damaged and destroyed, and the appellant, on behalf of himself and all other persons who had delivered wheat to the Government, claimed a declaration that he and such other persons were entitled to compensation for such negligence and loss. The respondent was appointed a nominal defendant to the proceedings, and delivered a defence which raised two points of law, viz.: (1) that there was no jurisdiction, (2) that there was no cause of action. On the hearing of the points of law by the Supreme Court of South Australia, that Court upheld the first objection of the nominal defendant on the ground that a petition on behalf of a plaintiff and other persons was not contemplated by Ordinance No. 6; but the Court held that this objection was not fatal to the petitioner's case, and that the petition was good so far as it prayed for relief on behalf of the petitioner himself. On this point therefore the decision of the Supreme Court of South Australia stood. On the second point raised by the nominal defendant the Supreme Court decided against him, but on appeal to the High Court of Australia, that Court reversed the decision of the Supreme Court, mainly on the ground that if the Act gave to each owner of wheat the right to insist that his own wheat should be carefully kept until it was sold, no similar right with regard to all other wheat was expressed or implied in the Act. The High Court declared that the petition disclosed no cause of action, and it was against this decision that the present appeal was brought.

The JUDICIAL COMMITTEE reversed the judgment of the High Court of Australia. The LORD CHANCELLOR, delivering their lordships' judgment, and after stating the facts, said the question was whether the Government of South Australia, in the performance of its duties under the Act, was free from any obligation to take ordinary and reasonable care. In their lordships' opinion it was not. It was an implied condition, said Lord Watson, in *Sanitary Commissioners of Gibraltar* v. *Orfila*, 15 App. Cas. 411, of statutory powers that when exercised they should be executed with due care; and the same doctrine applied generally to cases where a public authority undertook to deal with the property of the subject (see *Brabant* v. *King*, 1895, A.C. 632). The cases in which it had been held that statutory duties would not readily be extended by implication, such as *Sharpness New Docks Co.* v. *Attorney-General*, 1915, A.C. 654, had no application to a case where the duty plainly existed, and the only question was as to its careful exercise. It was not disputed that, having regard to the decision in *Farnell* v. *Bowman*, 12 App. Cas. 643, a claim founded on tort, as well as a claim for breach of contract, could properly be brought against the Government under Ordinance No. 6 of 1853. As to the suggestion that the responsibility, if any, for careful storage was upon the agents of the Government, and not upon the Government itself, their lordships were unable to accept it. The Government had power to appoint agents, but its powers were not confined as in *Fowles* v. *Eastern and Australian Steamship Co.*, 1916, 2 A.C. 556, to the selection of such agents. The agents, when appointed, acted on behalf of the Government, and there was no reason why the Government should not, according to the ordinary rule, be liable for their default. For those reasons their lordships were unable to agree with the view taken by the High Court of Australia, that—on the assumption which for the present purpose must be made, that the Government of South Australia, its servants or agents had been guilty of negligence or want of reasonable care in the handling and selling of the owner's wheat—the owners were wholly without a remedy. They were of opinion that in point of law the Government might be made liable for negligence and want of reasonable and proper care, if proved, and they would humbly advise his Majesty that the order of the High Court of Australia be reversed, and the order of the Supreme Court be restored with costs here and below.—COUNSEL: *Maugham*, K.C., and *Stamp*; *Barrington-Ward*, K.C., *Erskine Cleland*, K.C. (of the Australian Bar) and *Charles Doughty*. SOLICITORS: *Blyth, Dutton, Hartley & Blyth*; *Sutton, Ommanney & Oliver*.

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

Court of Appeal.

THOMAS *v.* **THOMAS.** No. 1. 19th December and 18th January.

HUSBAND AND WIFE—DESERTION—HUSBAND ORDERS WIFE TO LEAVE HOME—REQUEST TO RETURN—WIFE'S REFUSAL—REFUSAL TO RETURN JUSTIFIED BY HUSBAND'S CONDUCT—DESERTION CONTINUING—SUMMARY JURISDICTION (MARRIED WOMEN) ACT, 1893.

A husband who was proved guilty of acts of cruelty towards his wife finally ordered her to leave his house and take two of her children with her. She did so and returned to her parents' home. Immediately afterwards he begged her to return, but she refused to do so, and then took out a summons before the justices for separation and maintenance. The justices found that the husband had deserted his wife, and made an order that she was no longer bound to cohabit with him, and that he should pay her a weekly sum for maintenance, and gave the wife the custody of the children.

Held, that the desertion was a continuing offence which had not been put an end to by the husband's offers to take his wife back, and that the wife in the circumstances was justified in refusing to accept such offers.

Decision of the Divisional Court of the Divorce Division (Sir H. Duke, P., and Hill, J.) *affirmed*.

Russell *v.* Russell, 1895, P. 315, *applied*.

Appeal from a decision of the Divisional Court of the Probate, Divorce and Admiralty Division (Sir H. Duke, P., and Hill, J.), reported 30 T.L.R. 520, dismissing an appeal by a husband from an order of the justices at Brynmawr, South Wales, granting a separation order and maintenance. The appellant, Henry Thomas, was married to the respondent, Mary Ethel Thomas, in June, 1914. He served in the war and on his return bought a confectioner's business at Greenwich, where they lived together. According to the evidence he frequently ill-treated his wife. On 16th June, 1922, he quarrelled with her, and, in language of great coarseness, ordered her to leave the home. Her parents had warned him that if she went she would not return, but he repeated the order, and told her that she might take two of the children with her. Next day he repented, and begged her to return, but she refused. The question was whether the husband had deserted the wife. The Divisional Court held that the justices were right in finding that the desertion had been proved, and had not been put an end to by the request to return, and upheld their order that the wife should no longer be bound to cohabit with the husband, and that she should have the custody of the three children of the marriage, and maintenance at the rate of £2 a week, with costs. The husband appealed.

THE COURT dismissed the appeal. *Cur. adv. vult.*

POLLOCK, M.R., said that it had been argued that desertion was a continuing offence, and that as the husband, by subsequent acts, had endeavoured to get his wife to return to him, there could no longer be desertion. The justices, however, had found the desertion proved, after estimating the conduct of the appellant on the question of desertion by reference to his cruelty and general conduct up to the time when he sent his wife away from him. Since then he had attempted to get his wife to return to him by trying to see her and writing letters to her, and these were relied upon as acts of penitence determining any intention to desert his wife. In his judgment, and for the reasons given by the President of the Divorce Division, the justices were right in considering the husband's conduct as a whole, and in deciding that the wife's refusal to return to cohabitation was not without just cause. The husband had acted with deliberation and determination to part from his wife. His previous conduct might be

looked at to see whether his action 16th June ought to be regarded merely as an angry impulse. He had from time to time been guilty of gross cruelty to his wife, but three months before he had told her to go, and by repeated acts of cruelty he had shown that he valued his wife's presence but little. It was contended for him that his so-called repentance must be accepted as the outstanding feature of his conduct during some eight or nine months, even though he might not be entitled to an order for restitution of conjugal rights, in accordance with the principles laid down in *Russell* v. *Russell*, 1895, P., 315, as interpreted in *Oldroyd* v. *Oldroyd*, 1896, P., at p. 184. But why should that be so? It was a question for those who had to decide, upon the evidence before them, what weight and emphasis should be placed upon his cruelty, indifference, determination to get rid of his wife, and his sorrow when he realized the need of her. The justices had decided on all the facts before them and had estimated the effect of his action on 16th June by reference to his conduct generally, and had found that his intention was to break off matrimonial relations with his wife. His subsequent efforts to get her back and promises of amendment must be tried by the same test. Desertion could be put an end to by cohabitation, but it was a different proposition to say that a husband could obliterate his previous conduct by subsequent offers, the genuineness of which the wife might doubt with reason. Desertion was not a single act complete in itself, and revocable by a single act of repentance. The act of departure from the other spouse drew its significance from the purpose with which it was done, as revealed by conduct or other expressions of intention (*Charter* v. *Charter*, 84 L.T., 272). A mere temporary parting was equivocal unless and until its purpose and object was made plain. He agreed with the observations of Day, J., in *Wilkinson* v. *Wilkinson*, 58 J.P., at p. 416, that desertion was not a specific act, but a course of conduct. As Gorell Barnes, J., said in *Sickert* v. *Sickert*, 1899, P., at p. 282: "The party who intends bringing the cohabitation to an end and whose conduct in reality causes its termination commits the act of desertion." That conduct was not necessarily wiped out by a letter of invitation to the wife to return. It was for those who heard the whole evidence to decide whether the conduct amounting to desertion was no longer to be regarded, so that there was no excuse for the refusal of the other spouse to return. The justices had rightly heard the evidence, and had come to a proper conclusion, and the appeal must be dismissed. WARRINGTON, L.J. and SARGANT, L.J. delivered judgment to the same effect.—COUNSEL: *Montgomery*, K.C., and *B. A. Leverson*; *Bayford*, K.C., and *Clifford Mortimer*. SOLICITORS: *Douglas Wiseman & Co.*; *Bridges, Sawtell & Co.* for *Gibson, Harris & Hiley*, Brynmawr.

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

SCHILLER *v.* PETERSEN & CO. LIMITED.

No. 1. 18th and 21st January.

MORTGAGOR AND MORTGAGEE—MORTGAGOR TO FORM COMPANY "WITHIN SIX MONTHS OF THE DECLARATION OF PEACE"—WHETHER CALENDAR OR LUNAR MONTHS.

Although by the common law the word "month" means a lunar month, or period of twenty-eight days, it is open to the court to look at the intention of the parties to a contract to see whether a lunar or calendar month was intended. Further, in mortgage transactions there is a general rule that "month" means calendar and not lunar month.

Decision of Eve, J., 68 SOL. J. 252, *reversed*.

By a mortgage deed dated 9th March, 1917, it was stated that in consideration of £5,000 paid by the plaintiff as mortgagee to the defendants as mortgagor, the latter covenanted to pay the same, and to pay interest at 6 per cent. until repayment, by equal half-yearly payments, on 9th March and 9th September in each year. The mortgagor by the same deed conveyed certain mining lands at Altarnum in Cornwall to the mortgagee, with a proviso for redemption. There was also a proviso that the mortgagee would not call in the mortgage if the mortgage interest were paid on the appointed days or within "twenty-eight days" after each of such days, and the further important proviso that "Provided also that in case a company shall be formed with limited liability within six months of the declaration of peace, and which company shall acquire the said premises"—then the mortgagee would accept £5,000 in first and only debentures of that company in full satisfaction of the mortgage debt, and would thereupon reconvey the premises to the mortgagor. The declaration of the Treaty of Peace was on 31st August, 1921, and the projected company was formed and registered by the defendants on 20th February, 1922, under the name of Altarnum Mines Limited. The plaintiff refused to recognise the new company, to accept its debentures, or to re-convey the land, and he brought this action claiming £5,000 and interest under the mortgage, and, in default, foreclosure. His contentions were (1) that an effective company had not been formed, and (2) that the registration of Altarnum Mines Limited should have been within six lunar months of the declaration of peace, and that as the registration was not until five days after that period, the proviso had not been complied with. The defendants contended that "within six months" meant within six calendar months, *i.e.*, before 28th February, 1922. Eve, J., held the formation of the company was a compliance in form, but not in substance, with the proviso. Upon the second point, he held that there was nothing in the mortgage deed which prevented the words "six months" having their primary legal meaning of lunar months. He therefore gave judgment for the plaintiff. The defendants appealed. The court allowed the appeal.

Sir ERNEST POLLOCK, M.R., said that the principal question was to determine whether in that particular deed "month" meant a period of twenty-eight days or a calendar month. The court had looked into cases which went so far back as 1745, and in *Dyke* v. *Sweeting*, Willes, 585, it was said that the court thought that "months" were meant to be calendar months, and that showed that it was possible to look at the indenture itself to see whether calendar or lunar months were intended; in spite of the common law rule that "month" meant lunar month, except in regard to mercantile transactions in the City of London. There were two cases decided in 1769 of mortgages, and the opinion was expressed by Lord Hardwicke that the imputation there was calendar month and not lunar month. But with regard to mortgages, as long ago as the fourth edition of Davidson's Precedents in Conveyancing, Vol. II, part 2, p. 309, there appeared a note in which it was said that "month" though in law *primâ facie* a lunar month, yet in mortgage transactions generally meant a calendar month. That was in the edition of 1881, but the statement seemed to be taken from earlier editions, and the cases set out as bearing on the note appeared to justify the statement. In *Hutton* v. *Brown*, 29 W.R. 928; 45 L.T. 343, Fry, J., had the doctrine put before him in very clear terms, and it was said that in mortgage transactions "month" meant calendar month, and there was cited the note in Davidson's Precedents, and Fry, J., said: "It is said that in mortgage transactions months are always calendar months, and this is a mortgage transaction." He found that the transaction there was not a mortgage transaction, but it appeared that he differentiated the meaning in a mortgage transaction from the ordinary common law meaning, without dissenting from the rule. In 1904 Farwell, J., decided the case of *Bruner* v. *Moore*, 52 W.R. 295; 1904, 1 Ch. 305, and *Hutton* v. *Brown*, *supra*, was cited before him, and he said that words must have their ordinary primary meaning unless the context or surrounding circumstances showed that a secondary meaning was intended; but he did not make any particular reference to mortgages, and it seemed, therefore, that he was not inclined to dissociate himself from the rule. He did, however, set out a list of cases in which "month" had been held to mean calendar month, such as *Lang* v. *Gale*, 1 M. & S. 111, *Reg* v. *Inhabitants of Chawton*, 1 Q.B. 247, and others, cases where the context showed what the parties intended. Having regard to these authorities, it seemed to him (the Master of the Rolls) that there was a rule whereby in mortgage transactions "month" was to be looked upon as a calendar month, and he thought that Fry, J., and other judges and other authorities had recognised that rule. He (the Master of the Rolls) could not read this transaction as anything else but a mortgage transaction, but, whether it were so or not, there seemed in any case enough in the document to show that calendar months were intended by the parties. Where a period of twenty-eight days was referred to in the document it was in fact not set out as "a month" but as twenty-eight days, showing the general intention to use "month" as implying calendar month. Eve, J., had therefore come to a wrong conclusion when he held that the company was formed outside the time limit. As regards the sufficiency of the company formed, it seemed impossible to say that the terms of the proviso had not been carried out. The appeal must therefore be allowed with costs, and an order made that the plaintiff must accept the debentures of the company offered to him.

WARRINGTON and SARGANT, L.JJ., delivered judgments to the same effect.—COUNSEL: *Clayton*, K.C., and *Cecil Turner*; *Gover*, K.C., and *A. L. Ellis*. SOLICITORS: *May, May & Deacon*, for *Coward, Grylls & Coward*, Launceston; *Maxwell & Co.*

[Reported by G. T. WHITFIELD-HAYES, Barrister-at-Law.]

The London Probation Committee (of which Mr. S. W. Harris, Assistant Secretary, Home Office, is chairman) gave a reception last Saturday in the library of the Home Office to the probation officers attached to the Metropolitan Police Courts, and invited the London magistrates and others to meet them. There were present the Home Secretary, accompanied by Mrs. Henderson, the ex-Home Secretary, Mr. Bridgeman, Sir John Anderson, Permanent Under-Secretary of the Home Office, Sir Chartres Biron, the Chief Magistrate, and several London magistrates. Mr. Bridgeman assured the probation officers that they could rely on his successor at the Home Office for sympathy and support in their work, and the Home Secretary expressed his interest in probation and his desire that still further use should be made of this hopeful method of dealing with delinquents.

CASES OF LAST SITTINGS.

Court of Appeal.

REDHEUGH COLLIERY LIMITED *v.* GATESHEAD UNION ASSESSMENT COMMITTEE. 22nd November.

RATES—APPEAL TO QUARTER SESSIONS—NOTICE—RESPITE—FURTHER RESPITE—POINT RAISED NOT SPECIFIED IN NOTICE OF OBJECTION TO ASSESSMENT COMMITTEE—POOR RELIEF ACT, 1743, 17 Geo. II, c. 38, s. 4—UNION ASSESSMENT COMMITTEE ACT, 1862, 25 & 26 Vict., c. 103, s. 18—UNION ASSESSMENT COMMITTEE AMENDMENT ACT, 1864, 27 & 28 Vict., c. 39, s. 1.

A colliery company gave notice of objection to the valuation list in force in the parish, and appealed against a poor rate on the ground that the valuation of the colliery was unfair, incorrect or excessive and illegal. In a schedule to the notice they filled in the value of the colliery under the heading "present rateable value," but made no entry in the column headed "present gross estimated rental in rate book." No objection was made to the assessment committee that the statutable deductions from the gross were insufficient, but there was nothing to show that the objectors had definitely limited their case so as to exclude this contention. The assessment committee upheld the assessment and the colliery owners appealed to Quarter Sessions. The notice given before the Midsummer Sessions was less than the requisite twenty-one days' notice. The appeal was entered and respited to the Michaelmas Sessions, and was then further respited to the Epiphany Sessions. No new twenty-one days' notice was given either for the Michaelmas or the Epiphany Sessions.

Held, that the notice which was in fact given, and which was not a twenty-one days' notice for the Midsummer Quarter Sessions, was a good notice for the Michaelmas Quarter Sessions, and it was not open to the assessment committee to say that a twenty-one days' notice was not given, and, notwithstanding the provisions of s. 4 of the Poor Relief Act, 1743, no valid objection could be taken to Quarter Sessions respiting the appeal from the Michaelmas Sessions to the Epiphany Sessions. The notice already given remained a good notice notwithstanding the further respiting of the appeal.

The colliery company, at the hearing before Quarter Sessions, put forward an objection with regard to the sufficiency of the statutable deductions made from the gross estimated rental, in order to arrive at the rateable value. The court of Quarter Sessions entertained the objection, and as a result, reduced the rateable value of the colliery to £1. The Divisional Court held (by a majority) that the colliery company were not entitled to raise before the Quarter Sessions the point whether in the rate appealed against, sufficient deduction was made from the gross rental to arrive at the rateable value, as that point was not sufficiently taken before the assessment committee.

Held, that the appellants having served a general notice of objection, which complied with the requirements of s. 18 of the Union Assessment Committee Act of 1862, the onus lay on the assessment committee to prove that the appellants had had the fullest opportunity of stating all the points they desired and had stated them, and that the particular point in question was not included. As in this case the assessment committee had refused the appellants a general application for a further hearing, the assessment committee could not say that under the general notice of objection which was given, it was not open to the appellants to take the point at Quarter Sessions. Decision of the Divisional Court, ante 222; 39 T.L.R. 661, *reversed.*

Appeal from the Divisional Court, 68 SOL. J. 222; 39 T.L.R 661. The facts sufficiently appear from the head note and from the report, *ante*, p. 222 of the case in the Divisional Court, where the special case is set out.

BANKES, L.J.: The questions arise under the statutes relating to rating. The statute of 1864, the Union Assessment Committee Amendment Act, s. 1, is the section which now regulates the right of appeal to Quarter Sessions from the assessment committee, and the material parts of that section are as follows: "No person shall be empowered to appeal to any sessions against a poor rate made in conformity with the valuation list approved of by such committee, unless he shall have given to such committee notice of objection against the said list, and shall have failed to obtain such relief in the matter as he deems just; and which objection, after notice given at any time in the manner prescribed by the said Act with respect to objections, the committee shall hear, with full power to call for and amend such list, although the same has been approved of," and so forth. In order to see what notice of objection this section requires to be given, one has to turn back to s. 18 of the Union Assessment Committee Act of 1862, and that provides that "any person who may feel himself aggrieved by any valuation list on the ground of unfairness or incorrectness in the valuation of any hereditaments included therein, or on the ground of the omission of any rateable hereditament from such list, may at any time after the deposit as aforesaid of such list, and before the expiration of twenty-eight days after the notice of the deposit as aforesaid, give to the committee and to the overseers a notice in writing of his objection, specifying the grounds thereof." The conditions precedent laid down there, therefore, are that the appellant to Quarter Sessions must have given the committee notice of his objection and shall have failed to obtain relief in such manner as he deems just, he must give a twenty-one days' notice, his case must be one in which he complains of the unfairness or incorrectness in the valuation, and the notice of his objection must specify the grounds. It is quite plain that the statute itself indicates what the general grounds are, and the general grounds are "unfairness or incorrectness in the valuation of any hereditaments," and all the statute requires is that he should specify the grounds of his objection. In my opinion, the person who gives a notice specifying as the ground of his objection that he complains of the "unfairness or incorrectness in the valuation of any hereditaments included therein" gives a notice which complies with the statutory requirements of the section Let me just deal with the matter from two aspects. Assume that an objector has given a notice of objection, stating merely that he generally complains that he feels aggrieved with the statement in the valuation list, in reference to the valuation of the hereditament on the ground of unfairness or incorrectness. Assuming that he has given a general notice in that form, it appears to me that he may either attend before the assessment committee to argue or support his case, or he may refrain from attending, and with all submission to the argument which has been addressed to us, as far as I know there is no obligation upon a person who has given a notice of objection to attend before the assessment committee, and assuming there is no attendance, the assessment committee are bound to deal with the notice of objection, although the person making it does not himself personally attend. Take the case where, in the case of non-attendance, the assessment committee decide against the objection; so far as I can see there is no reason why the objector should not then appeal to Quarter Sessions and be entitled to urge at Quarter Sessions any ground of objection which was properly covered by the general notice given in the way I have indicated.

Now I will take the case of a person who does attend before the assessment committee in support of his general objection. It seems to me quite possible that a person who does attend may either expressly or impliedly by his conduct limit his general objection to some particular objection and urge that particular objection, and indicate either expressly or impliedly at the same time that that is his only objection. I think if that course is followed it would be open to the assessment committee at the Quarter Sessions to say: "Although you, as appellant, gave a general notice in the first instance, you did subsequently, when you appeared before the assessment committee, limit your objection to one particular point"—or it may be several particular points—"and you cannot at Quarter Sessions travel beyond those points or urge a case which you did not include under your heads of objection when you appeared before the assessment committee." I think it is quite clearly established that an appellant at Quarter Sessions from a rate cannot raise at Quarter Sessions matters which were not raised before the assessment committee. The case that has been referred to, and was dealt with by Greer, J., in his judgment, *Williams* v. *Bedminster Union*, 20 L.T. 710, I think makes that point reasonably clear.

In this particular case the question is not quite satisfactorily disposed of in my opinion as to what really did occur before the assessment committee, because this is a case in which the objectors did appear before the assessment committee, and having regard to what I have already said, I think that if the objectors had before the assessment committee definitely limited their case to one or more particular points, they ought not at the Quarter Sessions to be allowed to travel beyond them. But what we know, and all we know, as to what happened appears in the special case, and this is what is stated: "The rate in question was made on the 13th April, 1921, and the supplemental rate on the 16th June, 1921, for the period ending the 31st March, 1922. The appellants on the 29th September, 1921, gave notice of objection to the valuation list in force in the said parish, a copy of the said notice marked 'A' is annexed hereto and forms part of this case. On the 1st November, 1921, the objection was heard by the assessment committee and was adjourned pending correspondence with the appellants and inquiries by the committee's valuer. After several intermediate adjournments, although the appellants requested and were refused a further hearing before the committee, the committee on the 19th April, 1922, informed the appellants that they had decided to sustain the assessment at the sums above stated. No express objection was made to the said list, either in the said notice or at the said hearing, on the ground that the deductions made from the gross estimated rental in order to arrive at the rateable value of the said colliery were insufficient." That leaves the matter in very considerable doubt as to what actually occurred, but we are told,

and I have no reason to doubt it, that what really occurred was that the objection had reference, not to what I call the ordinary question as to whether the statutory deductions had been sufficiently or properly allowed, but had reference to this particular colliery being dealt with on a conventional system apparently which had been adopted in the district for the purpose of rating collieries. No doubt that was so, and if that point had succeeded or had influenced the assessment committee, it may be that if the fullest opportunity had been given to the objector to state his case he might not have raised any further question; but on the other hand it is quite plain that those who were advising him were aware of an objection which, if taken, must in my opinion have been conclusive, and that was, that having regard to the gross which was inserted in the valuation list, if the proper statutory deductions were made, the rateable value must be reduced to practically nothing, because within a very short time after this refusal to grant a further hearing notice of appeal to Quarter Sessions was lodged, in which this very point appears in the forefront of the notice of appeal. In my opinion, if an assessment committee desires at Quarter Sessions to establish that any particular point is not open to the appellant at Quarter Sessions, because it was not taken before the assessment committee either in the formal notice first given or in argument subsequently, it lies upon the assessment committee to prove that the applicant, or the objector, had the fullest opportunity of stating all the points he desired to state, and that he had stated them, and this particular point was not included. Here, in my opinion, this assessment committee are not in that position because they did refuse this colliery company a further hearing. The further hearing was not applied for for the purpose of further arguing this particular point; it was, apparently, a general application for further hearing; and that was refused, and when once refused it seems to me to shut the door to any possibility of the assessment committee in this particular case being able to say that under the general notice of objection which was given it was not open to this particular appellant to raise this point at the Quarter Sessions.

That deals with the main objection. There was this further objection which, as far as I understand the argument, takes this form; it is said that if the appellants had accepted the gross valuation it might then have been open to them to raise the argument they did, that the statutory deductions had not been made, but that inasmuch as they did not make in their original notice of objection any reference to the gross, that point is not open—at least, so I understand the argument. For myself I fail to see that there is any substance in it, because when the colliery company carried in, or gave their notice of objection, they omitted altogether any reference to the gross, the natural conclusion from which, as I understand such a notice, would be: "We do not object to the gross," and I do not see any difference between saying: "I do not object to the gross," and "For this purpose I accept the gross." I myself fail to see that there is any substance in the point that it is not open to these appellants to rely upon a case which is founded upon the gross as inserted by the assessment committee themselves in the valuation list and not objected to by the colliery company, and then to say: "From that gross I admit the statutory deductions should be made, in which case it is obvious that the amount inserted as the rateable value is excessive."

Another question which is asked in the special case is whether the Court were right in thinking that they were bound by the decision of *The Hendon Paper Company* and *The Sunderland Union Assessment Committee*, 1915, 1 K.B. 763. In my opinion, they clearly were. It has been too long established that where an appeal is made against the amount inserted in a valuation list, as being the rateable value, where it appears that the objection made is a valid objection, the assessment committee cannot save themselves by altering the amount of the gross assessment. Whether that really works fairly is a matter which I think deserves serious consideration, but I am sure that if any alteration in that practice is to be made it is not to be made, and cannot be made, by a consideration of the decisions at the present stage of matters. The matter has been too long decided and established, and if any alteration is to be made it must be made by legislation. I think, therefore, on the main points that the view taken by Mr. Justice Greer was the right one, and I would add to the reasons which he gave, a reason which seems to me to be a special one depending upon the particular facts of this case, namely, the fact that in my opinion the assessment committee were not in a position to say to Quarter Sessions: "This particular objection which has not been urged before you was not taken, or was abandoned, or was not included under the general head of objection given."

I have only to refer now to the perliminary points. I do not think I can add anything to what was said in the Court below. In the notice of appeal there is authority for saying that the notice which was in fact given, and which was not a twenty-one days' notice for the Midsummer Quarter Sessions, was a good notice for the Michaelmas Sessions, and it is not open to the assessment committee to say that a twenty-one days' notice was not given. It is quite true that what the parties did was to go to the Midsummer Sessions and ask the Sessions to deal with the matter under the Act of 1743. I do not think that that affects the question as to whether the notice which was in fact given was a good twenty-one days' notice for the Michaelmas Sessions or not. They did go before the Midsummer Sessions, a twenty-one days' notice for the Michaelmas Sessions having, in my opinion, been given. When they got there, whether it was done by arrangement or consent, or whether any objection was made, we do not know, but the Justices did adjourn the appeal to the next Quarter Sessions. Under those circumstances, in my opinion, no valid objection can be taken to the notice. Then it is said, that because the statute says that having adjourned it they shall "adjourn the appeal to the next Quarter Sessions and then and there finally determine the same" means that having adjourned it to the Michaelmas Sessions they must, whatever happens, decide the case finally at those Sessions. Of course, if the statute said it, it has got to be done, but it requires much stronger words than these to deprive the Sessions of their common law to respite an appeal, and the view taken by Mr. Justice Greer on this point is quite right, and the words "then and there" are used in opposition to the language used above in reference to an adjournment. The one Sessions is a Sessions of the adjournment; the other Sessions is a Sessions of decision, but because it is a Sessions of decision it does not cease to have the common law right to respite if it thinks proper.

For these reasons I think that the appeal must be allowed, the questions in the special case must be answered in the affirmative, and the decisions of the Quarter Sessions will stand; and I think the costs here and below must be the appellants'.

SCRUTTON and ATKIN, L.JJ., concurred in allowing the appeal.—COUNSEL: *Ernest Page*, K.C., *G. F. L. Mortimer*, K.C. and *R. I. Simey*; *E. M. Konstam*, K.C., and *H. S. Mundell*. SOLICITORS: *Crossman, Block & Co.*, for *Murray & Richmond*, Newcastle-on-Tyne; *Teesdale & Co.*, for *Lambert & Lambert*, Gateshead.

[Reported by T. W. MORGAN, Barrister-at-Law.]

High Court—Chancery Division.

JACOBS *v.* THE BATAVIA AND GENERAL PLANTATIONS TRUST, LIMITED. P. O. Lawrence, J. 3rd and 18th December.

CONTRACT — COMPANY — PROSPECTUS — DEPOSIT NOTES — CONTRACT IN TWO INSTRUMENTS—COLLATERAL CONTRACT.

A promise inserted in a prospectus as to the issue of deposit notes for the purpose of making them a more attractive investment is not superseded by the issue of the deposit notes which are silent as to such promise. The contract with the purchaser of the notes is compounded of the two documents, the prospectus and the deposit notes, as the prospectus is a binding collateral contract in writing, the consideration for which was the taking up of the notes.

Heilbut Symons & Co. *v.* Buckleton, 1913, A.C. 30, *applied.*

Morgan *v.* Griffiths, 1871, L.R. 6 Ex. 20, *inapplicable.*

Cases where the debenture contains the whole contract distinguishable, e.g., In re Tewkesbury Gas Co., 1911, 2 Ch. 279.

This was an action seeking a declaration as to the obligations of the defendant company with regard to setting aside sums to pay off certain deposit notes at 105 and for other relief. The facts were as follows: The plaintiff, upon the faith of a prospectus issued by the defendant company (hereinafter called the "Trust"), applied for £400 deposit notes, part of an issue of £100,000 then offered for subscription at par, and agreed to accept the notes upon the terms of the prospectus. Four deposit notes were sealed and sent to the plaintiff, each for £100. The prospectus stated that the notes would be paid off at £105 by four annual drawings, and it contained the following paragraph: "Earlier payments. The Trust retains the right to pay off at £105 all or any of the outstanding notes at any time on giving three months' previous notice in writing, but in the event of the sale of the Rio Bravo estates (further referred to in this prospectus) the directors will set aside out of the proceeds of such sale a sum sufficient to redeem all the notes then outstanding and will give the holders the option of being then paid off in cash at £105 or of retaining their notes till the date of drawings." Amongst the investments held by the Trust specified in the same prospectus were the Rio Bravo estates in Guatemala, valued therein at £150,000. It was further stated in the prospectus that, since the report was issued, an option had been granted to an American financial group to purchase those estates from the Trust for £280,000, and that a specimen of the deposit notes, with the conditions attached, could be seen at the offices of the Trust. In each of the deposit notes it was stated that when the principal sum of £100 became payable in accordance with the conditions

endorsed thereon, the Trust would pay the registered holder £105, and that in the meantime interest would be paid on the principal moneys, and that the note was issued subject to and with the benefit of the conditions endorsed thereon, which were to be deemed to be part of the note. One of these conditions repeated the provision in the prospectus for payment off by the drawings, and another repeated the option retained by the Trust to pay off the principal moneys with interest at any time on giving three months' notice; but no mention was made, either in the body of the deposit note or in any of the conditions, of earlier payment in the event of the sale of the Rio Bravo estates. The option of purchase given to the American group had long since lapsed, but in 1923 the Trust contracted to sell the estates and the plaintiff, not having been given the option of being paid off in accordance with the promise contained in the prospectus and being apprehensive that the directors did not intend to set aside a sufficient sum to redeem the outstanding notes, commenced this action, and, in addition to the relief sought by way of declarations, claimed an injunction.

P. O. LAWRENCE, J., in the course of a considered judgment, said: In the first place, upon the true construction of the prospectus, the promise therein contained is not confined to a sale of the Rio Bravo estates to the American group, but is intended to take effect in the event of the sale of those estates to anybody before all the deposit notes have been paid off. On the main question of whether the notes constituted the only subsisting contract between the plaintiff and the Trust, I hold that the promise inserted in the prospectus, with the object of making the issue more attractive to the public, is not superseded by the issue of the deposit notes. The promise is to be construed as if it were inserted in the notes as a proviso to come into operation if and when the Rio Bravo estates were sold. The notes do not contain all the terms of the contract, but the contract is compounded of two documents, namely, the prospectus and the notes, which are to be construed together, or the promise in the prospectus is a binding collateral contract in writing, the consideration for which is the entering into by the plaintiff of the contract to take up the deposit notes, and the transaction satisfies the test laid down by Lord Moulton in *Heilbut Symons & Co.* v. *Buckleton, supra.* Such a collateral contract is outside the rule of law relating to the inadmissibility of parol evidence to add to, vary or contradict the terms of a written instrument, as illustrated in the cases of *Morgan* v. *Griffiths, supra*; *Erskine* v. *Adeane*, 1873, L.R. 8, Ch. 756. *Re Teckesbury Gas Co., supra*, and *British Equitable Assurance Co.* v. *Bailey*, 1906, A.C. 35, are distinguishable on the ground that, in the first case, the question was as to the construction of a debenture which contained the whole contract, and the court refused to refer to the prospectus in pursuance of which the debenture was issued, and that, in the other case, the whole contract was contained in the policy. In the result, the plaintiff succeeds and is entitled to the relief sought.—COUNSEL: *Jenkins*, K.C., and *Cecil Turner*; *Schiller*, K.C., and *Heckscher*. SOLICITORS: *Reid Sharman, White, Brutton & Walker*; *Jenkins, Baker & Co.*

[Reported by L. M. MAY, Barrister-at-Law.]

High Court—King's Bench Division.

KIMM *v.* **COHEN.** Div. Court. 21st November.

EMERGENCY LEGISLATION—LANDLORD AND TENANT—OVERPAYMENT OF RENT BY TENANT—STANDARD RENT—APPORTIONMENT—RECOVERY—INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920, 10 & 11 Geo. 5, c. 17, s. 14.

In March, 1921, *three rooms, forming part of a house, were let to a tenant at* £1 *a week, including the use of the bath room, cellar and garden. In October*, 1922, *the tenant ascertained that the rates had been considerably reduced. Thinking that he ought to obtain some concession with regard to the rent, he enquired what the standard rent of the house was, and refused to pay further rent until his request was granted. In January*, 1923, *the landlord commenced proceedings against him for the recovery of* £11 *in respect of unpaid rent. Ultimately the rent was apportioned at* 11*s. 7d. per week, and at the final hearing of the action in the county court the tenant sought judgment on a counter-claim for the difference between* £1 *a week and the apportioned sum of* 11*s. 7d. during a period of eighty-six weeks, being the amount which, according to his contention, had been overpaid by him in respect of rent. The county court judge gave judgment in favour of the plaintiff, and the defendant appealed.*

Held, that s. 14 *of the Increase of Rent and Mortgage Interest (Restrictions) Act*, 1920, *applied retrospectively, and that the tenant was entitled to recover in respect of the overpayments of rent.*

Action. Appeal from a decision of a county court judge. The facts are sufficiently stated in the head note. By s. 14 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, it is provided: "(1) Where any sum has, whether before or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which is by virtue of this Act, or any Act repealed by this Act, irrecoverable by the landlord or mortgagee, the sum so paid shall be recoverable from the landlord or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and any such sum, and any other sum which under this Act is recoverable by a tenant from a landlord or payable or repayable by a landlord to a tenant, may, without prejudice to any other method of recovery, be deducted by the tenant or mortgagor from any rent or interest payable by him to the landlord or mortgagee."

SANKEY, J., delivering judgment, said that there appeared to be nothing in the words of s. 14 (the section which governed the point) preventing the Act from applying retrospectively; on the other hand, there appeared to be reasons for its application to be retrospective. If, for example, the business of a county court prevented an application for an apportionment from receiving attention for three months, ought no sum to be recoverable until the apportionment had been made? The defendant was entitled to recover the amount overpaid by him, and the appeal must be allowed.

TALBOT, J., agreed, and the appeal was allowed.—COUNSEL: *J. D. Casswell.* SOLICITOR: *J. H. McDonnell.*

[Reported by J. L. DENISON, Barrister-at-Law.]

REX *v.* **ROBERTS:** *ex parte* **SCURR.**

Div. Court. 31st October, 1st and 21st November.

LOCAL GOVERNMENT—METROPOLITAN BOROUGH—AUDIT OF ACCOUNTS—AUDITOR—POWERS—SURCHARGE—*Certiorari* TO QUASH—METROPOLIS MANAGEMENT ACT, 1855, 18 & 19 Vict., c. 120, s. 62—PUBLIC HEALTH ACT, 1875, 38 & 39 Vict., c. 55, s. 247 (7).

A borough council made payments of wages to their employés under the powers conferred upon them by s. 62 *of the Metropolis Management Act*, 1855. *The district auditor regarded certain payments, so made by them, as being far in excess of those necessary to obtain the services required and to maintain a high standard of efficiency. He, therefore, disallowed a sum of* £5,000, *and surcharged it on certain of the councillors.*

Held, that although the council were empowered by the words of the section to make such payments of this nature as they thought fit, they were in a fiduciary position, not only towards the ratepayers who had elected them, but to the ratepayers as a whole; that it was possible that a payment to a servant entitled to be employed and entitled to be paid by the council, might be of so excessive a character as to become an illegal or ultra vires *payment; that the sum in question was of such a character as to be brought within the words "an item of account contrary to law" within the meaning of s.* 247 (7) *of the Public Health Act*, 1875; *and that the auditor had acted within the powers conferred on him by the latter section in disallowing and surcharging the amount.*

The Mayor, Aldermen, and a number of the Councillors of the Metropolitan Borough of Poplar applied to the court on various grounds for an order quashing a certificate of disallowance and surcharge made by the district auditor of the borough, under which a sum of £5,000 was disallowed and surcharged upon them; These grounds were, *inter alia*: "(1) That the said surcharge was an improper limitation of the discretion vested in the council under s. 62 of the Metropolis Management Act, 1855 . . ." The facts were as follows: In the year 1914 there were no striking variations between the scales of payment made by the several metropolitan borough councils on account of wages of the several grades of their employés. The wages paid them by the Borough of Poplar were not the highest compared with those of other metropolitan councils, but were somewhat above the average—the maximum wage for the lowest grade of labour being 30s. weekly for men and 22s. 6d. weekly for women. By increases from time to time the maximum wage for similar labour had risen by 30th April, 1920, to 64s. and 49s. 9d. respectively. When auditing the accounts for the year ending 31st March, 1921, the auditor found as a fact that a marked increase in the wages scales had taken effect as from 1st May, 1920, and that from that date a maximum rate of 80s. per week for men and women of the lowest grade of workers had been maintained. He did not then raise any objection to such increases by reason of the fact that the cost of living had during and subsequent to the war considerably increased. At the audit beginning upon 26th January, 1921, he found that the above-mentioned rate of 80s. a week was still being maintained, although the cost of living had been materially reduced. He then proceeded to ascertain the rate of wages payable elsewhere in the London area, founding himself upon the agreed rates of the trade union and other awards

appropriate to the several groups of employés. He also prepared charts which were exhibited to the affidavit, filed by him in the case, showing (*a*) the bonus rates paid by the Borough of Poplar since April, 1920; (*b*) the bonus rates corresponding to the extra cost of living as shown by the *Labour Gazette*; (*c*) the bonus rate agreed upon in the awards of the Joint Industrial Council, London District, or of the appropriate trade union. Para. 9 of his affidavit was as follows: "I found (*a*) as a fact that the total of the wage payments by the council in the year 1921-1922 made by the council exceeded by about £17,000 the total amount of wages that would have been paid by them if the agreed wages of the awards referred to in the last paragraph had been adopted, and that the rates of payment were much above those contained in the said awards in the last two months of that year. (*b*) That on a comparison with the weekly wages paid in 1914, increased by a bonus proportionate to the increase in the cost of living, the council's wage payments in 1921-1922 showed an excess of over £25,000. (*c*) That the wages increases paid at the end of the year 1921-1922 were more than sufficient to compensate this increase in the cost of living by fully 100 per cent. in the case of men of grade 'A,' 200 per cent. in the case of women of grade 'A,' 80 per cent. in the case of men of grade 'B,' 85 per cent. in the case of general labourers. (*d*) That as the working hours per week were considerably shorter in 1921 and 1922 than in 1914, the figures given in (*b*) and (*c*) above would be much greater if the comparison were applied to wages per hour instead of wages per week, and that the excess over £25,000 mentioned in (*b*) above would thus be raised to an excess of more than £35,000. (*e*) That in the lower grades the new minimum rate varied from nearly three times to over four times the rates paid per hour in 1914." Being of opinion that, in consequence of this result, it might be his duty under s. 247 (7) of the Public Health Act to disallow some part of the council's wage payments during the year 1921 or 1922 or to make a surcharge in respect of loss to the rate fund unjustifiably incurred, the auditor adjourned his audit and gave to the members of the council concerned notice of that adjournment to afford them an opportunity of attending and making such representations as they thought proper. A number of them attended, and the auditor heard what they had to say. He then came to a determination which is set out in paras. 14, 15, 16 and 17 of his affidavit, as follows: "14. On the facts which were in evidence at the audit, and on the statements made before me by some of the applicants in this case, I took the view that the council in the exercise of their statutory powers had not paid due regard to the interests of the ratepayers whose funds they administered, had imposed unreasonable charges upon those funds, and had made payments which were far in excess of those necessary to obtain the services required and to maintain a high standard of efficiency, and which were thus in reality gifts to their employés in addition to the remuneration for their services, and that the persons responsible had thus incurred an unjustifiable waste of the rate fund and had acted arbitrarily and contrary to law. 15. Although I agreed that in May, 1920, the council exercised their statutory powers with due care in determining the wages to be paid for the time being to each group of manual workers, I have acted on the view that maintaining a minimum of £4 a week for unskilled labour after the reason for the increase of this level had to a large extent disappeared was not a reasonable and legitimate exercise of their statutory power. 16. In particular I formed the opinion that a certain resolution passed by the council on 31st August, 1921, to the effect that no reduction of wage or bonus should be made during the ensuing four months, which was subsequently acted upon for twelve months, was not a legitimate exercise of the council's power. It disregarded important reductions which had already taken place in the cost of living, and in trade union and other awards, and during the period of its operation further important reductions were likely to occur, and did in fact occur. This resolution and its extended application I regarded as *ultra vires* of the council. 17. I disallowed payments on account of wages amounting to the sum of £5,000 in the accounts of the council for the year 1921-22, and for so doing I stated my reasons in my certificate . . ." It was this disallowance and surcharge of £5,000 that the applicants sought to quash. By s. 62 of the Metropolis Local Management Act, 1855, it is provided: "The Metropolitan Board of Works, and (subject to the provisions herein contained) the Board of Works for every district under this Act, and the vestry of every parish mentioned in Schedule (A) to this Act shall respectively appoint or employ, or continue for the purposes of this Act, and may remove at pleasure such clerks, treasurers, and surveyors, and such other officers and servants as may be necessary, and may allow to such clerks, treasurers and surveyors, officers, and servants respectively, such salaries and wages as the Board or vestry may think fit."

SANKEY, J., delivered the considered judgment of the Court. After stating the facts, his lordship said that it should be stated that the surcharge was made upon all the members of the council, but, on the hearing, the case was abandoned against four who had not voted for the increases, and they were dismissed from the case. When the matter came on for argument the learned counsel who appeared on behalf of the auditor expressly disclaimed any charge of negligence or misconduct against any of the persons affected, and based his case upon the first words of s-s. (7) of s. 247 of the Public Health Act, 1875, which provides: "Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on persons making or authorising the making of the illegal payment." With regard to the points taken by the applicants (1) That the surcharge was an improper limitation of the discretion vested in the council under s. 62 of the Metropolis Management Act, 1855, which provides that they may employ such servants as may be necessary and pay them such salaries or wages as they, the council, may think fit. It was argued upon their behalf that it was the council who were to be the judges of what they thought fit, and that if they exercised their discretion honestly, as was admitted in the present case, the auditor had no right to interfere. They admitted that an auditor had a right to disallow an item contrary to law and to surcharge the same, but contended that an item contrary to law meant an item of payment which was *ultra vires, e.g.*, to a person or for an object to whom or for which they had no power to devote it. Great reliance was placed on their behalf upon the case of *R.* v. *Carson Roberts*, 52 SOL. J. 171; 1908, 1 K.B. 407, and it was said that the price to be paid for labour did not stand on a different footing from that to be paid for materials as far as the right of the auditor to surcharge was concerned, and that in the present case they were entitled to set an example as a model employer and to pay the £4 a week in question. It therefore became necessary for their lordships to state their view as to the proper construction of the two sections above referred to. They did not, however, desire to lay down any hard and fast rule as to what sum a borough council might or might not expend, or what sum a district auditor might or might not surcharge. They did not desire to say anything to fetter or hinder their discretion when properly exercised. What might be proper to be paid in one year might be entirely improper to be paid in a subsequent year. What might be proper to be paid in one district might not be proper to be paid in another. Nor did they desire to fetter or embarrass the discretion of an auditor in his duty of coming to a conclusion as to whether a surcharge should or should not be made. The question on a proper determination of the law became largely one of fact. To deal with s. 62 of the Metropolis Management Act, they could not think the words "as they think fit" entitled a council to pay any sum they liked to any of their employés. The council were in a fiduciary position, not merely towards a majority who had elected them, but towards the whole of the ratepayers. A councillor was not entitled to be unduly generous at the expense of those on whose behalf he was a trustee. Their lordships thought that a payment to a servant, entitled to be employed and entitled to be paid by the council, might be of so excessive a character as to go beyond the limits of legality and become an illegal or *ultra vires* payment. In cases near the line it would be as difficult for an auditor to surcharge as it would be for that court to overrule an auditor. Supposing that a wage of £3 was admittedly proper, and the wage paid was £3 3s., it might be that in such a case an auditor could not and probably would not interfere. Supposing, however, that a wage of £3 was a reasonable one, and a wage of £30 had been paid, there would, in their view, be material upon which an auditor could and ought to find the payment to be illegal, and to make a surcharge in respect thereof. In their lordships' view the present case was not near the line. The auditor had gone into very careful calculations and had taken into account everything that ought to have been taken into account. They were of opinion that the sum in question was of such a character as to be brought within the words "an item of account contrary to law" within the meaning of s-s. (7), and they therefore thought that he was right in disallowing and surcharging it as he did. With regard to an allegation that there had been an agreement or understanding between the councillors and the employés as a result of which, if it had been proved, the Court would not have thought it right to support a surcharge in respect of payments made in pursuance of such understanding, their lordships found, on the evidence, that no such agreement or understanding had been come to. In the result they were of opinion that the rule should be discharged with costs. Rule discharged.—COUNSEL: *Talbot*, K.C., and *Sir John Lithiby*; *H. H. Slesser*; *F. G. Enness*; *Montgomery*, K.C., and *Naldrett*. SOLICITORS: *Last, Sons and Fitton*; *W. H. Thompson*; *Solicitor to Ministry of Health*; *White & Leonard*.

[Reported by J. L. DENISON, Barrister-at-Law.]

Mr. William Jones, of Newport-road, Cardiff, retired solicitor and notary public, who died on 19th August, 1923, aged eighty-two, left estate of the gross value of £23,743, with net personalty £11,831. The testator left £100 to King Edward VII Hospital, Cardiff; £100 to John August Day, as a token of appreciation and regard for many years' service as managing clerk; and £20 to Edith Davies, if in his service at his death.

New Orders, &c.

Home Office.

THE FAIRS ACT, 1871.

THE LOCAL GOVERNMENT ACT, 1894.

BURTON-UPON-TRENT HORSE FAIR.

The Secretary of State for the Home Department hereby gives notice that a representation has been duly made to him by the Town Council of Burton-upon-Trent to the effect that it would be for the convenience and advantage of the public that the Horse Fair which has been annually held on the 28th day of October or, if that day be a Sunday, on the following day at Burton-upon-Trent, in the County of Stafford, should be abolished.

On the 28th day of February, 1924, the Secretary of State will take such representation into consideration, and any person who may desire to object to the abolition of the Fair should intimate his objections to the Secretary of State before that day.

Home Office, Whitehall,
25th January, 1924.

Ministry of Health.

NATIONAL HEALTH INSURANCE.

COURT OF ENQUIRY INTO THE REMUNERATION OF INSURANCE PRACTITIONERS.

AWARD.

We, the undersigned, being the Court of Enquiry appointed by a minute of the Minister of Health and the Secretary for Scotland dated the 12th December, 1923, have enquired into the matter mentioned in such minute and hereby report that the amount of the capitation fee per insured person per annum on the basis of which the Central Practitioners Fund under Article 19 of the National Health Insurance (Medical Benefit) Regulations, 1924, should be calculated as from the 1st January, 1924, so as to afford adequate remuneration for the time and service to be given by general practitioners under the conditions set out in those Regulations in connection with the medical attendance and treatment of insured persons, due regard being had to the service in fact rendered under the Regulations hitherto in force (such capitation fee not to include any payment in respect of the supply of drugs and appliances nor any payments to meet the special conditions of practice in rural and semi-rural areas), is nine shillings.

In the course of the enquiry it was stated on behalf of the Minister of Health and the Secretary for Scotland and on behalf of the British Medical Association that our finding was only intended to be binding for the year from the 1st January, 1924, to the 31st December, 1924, but that both parties desired the Court to make a recommendation covering such longer period as we should think fit.

We therefore recommend that the capitation fee of nine shillings so found by us should remain in force for a period of three years from the 31st December, 1924.

T. R. HUGHES.
F. C. GOODENOUGH.
GILBERT GARNSEY.

R. H. CROOKE,
Secretary to the Court.

23rd January, 1924.

TOWN PLANNING.

SUPPLEMENT TO MODEL CLAUSES.

The Minister of Health is about to issue a supplement to the Model Clauses published for use in the preparation of Town Planning Schemes. The purpose of the amendments and additions is indicated in explanatory notes printed in italics in the Supplement.

In particular, provisions are included for enabling the regulation of streets in a town planning area to be dealt with wholly in a Scheme, instead of partially in a Scheme and partially in bye-laws, thus, it is hoped, avoiding a dual system of control and introducing a desirable simplification.

The Supplement will be placed on sale and can be obtained through any bookseller or directly from H.M. Stationery Office, Imperial House, Kingsway, W.C.2.

Ministry of Health,
Whitehall, S.W.1,
28th January, 1924.

Appointment of Secretaries.

The Rt. Hon. John Wheatley, M.P., Minister of Health, has appointed Mr. A. N. RUCKER to be his Assistant Private Secretary.

Mr. Arthur Greenwood, M.P., Parliamentary Secretary of the Ministry of Health, has appointed Mr. H. H. GEORGE, M.C., to be his Private Secretary.

Ministry of Health.

The following circular letter has been issued to local authorities:

HOUSING, ETC., ACT, 1923.

Ministry of Health,
Whitehall, S.W.1.

31*st December*, 1923.

Sir,

With reference to the concluding sentence of paragraph 13 of the Circular addressed to Local Authorities on the 14th August last (Circular 388a), I am directed by the Minister of Health to say that the following model forms have been prepared by the Department for the guidance of Local Authorities, and are now available:—

(1) Model form of mortgage to secure advances made by a local authority under Section 5 (1) (*a*) (i) of the Housing, &c., Act, 1923. (Hsg. 50.)

(2) Model form of contract for sale by a local authority of land acquired for the purposes of the Housing Acts, the purchaser undertaking to erect a house and the local authority to pay a lump sum grant. (Hsg. 51.)

(3) Model form of agreement for building lease, the local authority paying a lump sum grant of an amount equivalent to the premium. (Hsg. 52).

These forms have been placed on sale and may be purchased (Hsg. 50 and 51, price 2*d.* net each; and Hsg. 52, price 3*d.* net) through any bookseller, or directly from H.M. Stationery Office, at the following addresses:—Imperial House, Kingsway, London, W.C.2, and 28, Abingdon Street, London, S.W.1; York Street, Manchester; 1, St. Andrew's Crescent, Cardiff; or 120, George Street, Edinburgh.

It should be clearly understood that these forms are intended merely to serve as models for the guidance of the draftsman in framing instruments to suit the requirements of the particular scheme of assistance adopted by the local authority. Their applicability, with or without modification, to the circumstances of any particular case is a matter for the advisers of the authority.

I am, Sir,
Your obedient Servant,
E. R. FORBES,
Assistant Secretary.

The Clerk to the
Local Authority.

Railway and Canal Commission.

THE RAILWAY AND CANAL COMMISSION (MINES WORKING FACILITIES) PROVISIONAL RULES, 1923.

Rules made by the Railway and Canal Commissioners under Section 20 of the Railway and Canal Traffic Act, 1888 (51 & 52 Vic. c. 25), in regard to References under the Mines (Working Facilities and Support) Act, 1923 (13 & 14 Geo. 5, c. 20).

(1) Upon a reference under the Mines (Working Facilities and Support) Act, 1923, of any matter by the Board of Trade to the Railway and Canal Commission the Board shall lodge with the Court all papers, documents, plans and material deposited by the applicant with the Board for the purpose of procuring the reference.

(2) The Board of Trade shall give notice to the applicant of the lodging of such reference with the Court, within three days after the reference has been lodged.

(3) Within 10 days of the date of the notice by the Board of Trade that a reference has been lodged the applicant shall apply to the Registrar to fix a date for the hearing by the Court of a summons for directions as to the procedure to be followed upon such reference and the Registrar shall give notice to the Board of Trade of the date of the hearing of such summons.

(4) Except as is herein provided the Rules of the Railway and Canal Commission Court shall apply.

(5) These Rules may be cited as the Railway and Canal Commission (Mines Working Facilities) Provisional Rules, 1923.

The Railway and Canal Commissioners hereby certify that on account of urgency the said Rules shall come into operation on the 1st day of January, 1924, and hereby make the said Rules to come into operation on that day as Provisional Rules.

Dated the 27th day of December, 1923.

John Sankey.
Robert L. Blackburn.
E. Tindal Atkinson.
J. C. Lewis Coward.

Approved,
Cave, C.

Approved,
P. Lloyd-Greame,
President of the Board of Trade.

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Forms of Proposal and full information can be obtained at the Society's Office.
G. H. MAYNE, *Secretary.*

Societies.

Lincoln's Inn.

LINCOLN'S INN WAR MEMORIAL.

Mr. Justice Eve presided at a meeting of barristers of Lincoln's Inn on Tuesday afternoon for the purpose of deciding upon a war memorial to be placed on the Bar Table to the memory of those who gave their lives in the war. On the motion of Lieut.-General Sir George Macdonogh, seconded by Mr. T. R. Hughes, K.C., a silver bowl was decided upon. The Admiral-Superintendent of Portsmouth had offered a piece of oak from the Monarch to form a plinth for the memorial, and this was gratefully accepted. A committee was appointed to carry out the decision of the meeting. Subscriptions may be sent to Mr. E. Atkin, 1, Paper-buildings, Temple, or to Mr. J. H. Bowman, 24, Old-buildings, Lincoln's Inn, W.C.2, who are acting as honorary secretaries.

The Middle Temple.

Mr. Kellogg, the United States Ambassador, was admitted an honorary bencher of the Middle Temple at "call night" in the Inn on Monday evening. He had a very cordial reception when he entered the hall accompanied by Sir Robert Wallace, K.C., who has succeeded Lord Carson as the Treasurer. Other distinguished members of the United States Bar who are honorary benchers of the Middle Temple are Mr. W. H. Taft and Mr. J. W. Davis. Mr. Choate also was similarly honoured during his Ambassadorship.

The Law Society.

SPECIAL GENERAL MEETING.

A Special General Meeting of the Law Society was held at the Society's Hall, Chancery Lane, on Friday the 25th ult., Mr. R. W. Dibdin (London, President) in the chair. Among those present were the following members of the Council: Mr. W. H. Norton (Manchester, Vice-President), Mr. Ernest Edward Bird, Mr. Harry Rowsell Blaker (Henley-on-Thames), Mr. Alfred George Coley (Birmingham), Mr. Weeden Dawes, Mr. Herbert Gibson, Sir John Roger Burrow Gregory, Mr. Dennis Henry Herbert, M.P., Mr. Leonard William North Hickley, Mr. Arthur Murray Ingledew (Cardiff), Sir Charles Elton Longmore, K.C.B., V.D. (Hertford), The Hon. Robert Henry Lyttelton, M.A., Mr. Charles Mackintosh, LL.D., The Rt. Hon. Sir Donald Maclean, K.B.E., Mr. Philip Hubert Martineau, B.A., Mr. Charles Gibbons May, Mr. Robert Chancellor Nesbitt, M.P., Sir Arthur Copson Peake (Leeds), Mr. Reginald Ward Edward Lane Poole, B.A., Mr. Harry Goring Pritchard, Mr. Charles Scriven, LL.B., O.B.E. (Leeds) and Mr. Francis Edward James Smith, M.A.: also Mr. E. R. Cook (Secretary) and Mr. H. E. Jones (Assistant Secretary).

CENTRAL COUNTY COURT.

Mr. JAMES DODD (London) asked "What progress has been made towards the establishment at the Law Courts of a Central County Court where actions can be tried by agreement between the parties." He said that some time ago he had carried at a general meeting of the Society a motion in favour of the establishment of such a court as he was advocating. He asserted that the court would save a great deal of trouble to the solicitors, for they would not be compelled, as was the case at present, to attend at Edmonton, Barnet and other out-of-the-way places, where they might have to hang about all day, waiting for their cases to come on. He had been waiting for a long time in the hope that the Council would do something, but he could not hear of any progress having been made. What was also wanted was a County Court Clearing House, where summonses could be issued. This would save a very great deal of trouble, and the waste of much time.

The PRESIDENT said the Council had given very full consideration to the matter, and had referred his resolution to the County Courts Committee, which was a very strong committee, and that committee had issued a report, dated 7th May, 1920, in which they recommended that the attention of the Lord Chancellor should be directed to the report of their committee and to other documents which they enclosed. That report was in favour of the suggestion contained in the resolution which had been passed. The Council's letter was dated 26th May, and it was acknowledged "with many thanks" by Sir Claud Schuster on the 27th. The Council again wrote later to the Lord Chancellor, and they were told that the matter was still receiving consideration. A letter from Sir Claud Schuster, dated 23rd February, 1920, was as follows: "In reply to your letter of the 21st February, naturally the suggestion of the Law Society will receive the most careful and sympathetic consideration by the Lord Chancellor. Could you, however, in order to place him in a position better to appreciate what is desired, somewhat simplify the proposal? It is, I think, obvious that this is one of the cases where everything turns on detail. For example, where is the plaint to be taken out, and how is the agreement to be obtained? Is the judge to be the Westminster judge sitting at the Strand sometimes, and at Westminster sometimes, or a new judge appointed for the sole purpose of hearing these cases? (It seems to me that if what is desired is certainty and expedition, it will be necessary either that one judge should always sit at the Strand and sit nowhere else, or that there should be a rota of London judges providing continuous sittings.) How are the officials, etc., of the court to be supplied, and how paid? Is the power of remitter, which has been simplified by the Act of 1919, to be exercisable so as to send a case for trial to this new court irrespective of agreement? What is the object sought to be obtained by the trial being in the Royal Courts of Justice rather than, say, at Westminster or elsewhere? Please do not assume from these questions that I am hostile to the proposal. I know that it is favoured by many county court judges, but I should like to know the arguments in favour of it." An answer was sent by the Council, and the matter was again being carefully considered by the Lord Chancellor. Of course, as the meeting knew, there had been a rather rapid succession of Lord Chancellors lately. He did not know whether that had had any effect on the consideration given to the subject, but the Council would not abstain from still pressing it on the Lord Chancellor, whoever might occupy the office.

Mr. DODD said he thought it would be rather courteous if these questions were submitted to a general meeting of the members. He had never heard anything of these answers, and he had thought the whole thing had become dormant. The original suggestion was that the central court might be a branch of the Westminster County Court, established in the Strand Law Courts. It was perfectly clear that if the business was large the courts would be kept going by deputy judges. Under present conditions the congestion was such that cases were adjourned time after time. He had recently been kept at a county court knocking about three whole days over a case, and it had then been adjourned to another day. Surely something could be done to remedy the present state of affairs. Now that there was a new Lord Chancellor it might be possible to get something done.

AMERICAN BAR ASSOCIATION VISIT.

Mr. EDWARD A. BELL asked the following question: "Whether the Council's arrangements for the entertainment of the American Bar Association during its visit to this Country will include a Reception, to which ladies accompanying the Association will be invited?" He said his reason for putting the question upon the notice paper was that he was fortified by the recollection, and it was common knowledge, that there had been a very considerable increase of the income of the Society, and, therefore, it really did seem to be within the bounds of reason that there would be an area of opportunity for entertainment such as he suggested.

The PRESIDENT said that the visit of the American Bar was really a great and important matter, not only internationally, but between England and America, and they were bound to feel that it provided a great opportunity and was a matter of very considerable magnitude. The latest report was that about 750 barristers would come from America, whilst a large number of the members of the Canadian profession were coming over to join as hosts, to the number of something like 500. So that including the ladies, or any members of their families who might take the opportunity of coming to England, there would be a very large number, and the dealing with the subject was a very important matter. He was on the joint committee of which the Attorney-General was chairman. He had attended a meeting of that committee on the previous evening, when the new Attorney-General presided, and the subject was fully considered. Up to the present, however, information of the kind asked for could not be given, but there would be no objection to stating what had been done when a decision had been arrived at. Naturally, dining would enter into a matter of this kind, but it would be rather difficult to entertain 700 visitors, without

mentioning their hosts. Many suggestions were made at the meeting, and it was hoped that some suitable action would be arrived at. A strong opinion had been expressed in favour of ladies being admitted to the banquets, so that possibly Mr. Bell's wish might be carried out. It had been settled that the guests should come over on the 20th July. He believed they had hired a liner ship for themselves; and had, with the assistance of Messrs. Cook, taken rooms in London which it was hoped would be adequate to house the whole number.

AUDIENCE OF SOLICITORS.

Mr. DODD moved "That it is to the public interest that Solicitors should have audience in all Courts co-equal with barristers and that the Council be directed to take such steps as may be necessary in order to secure this reform." He said that the question was one which affected more materially the larger body of the profession practising in the provinces. Most of those practising in London did not specialise in advocacy, and they had the barristers at their elbows, so to speak, whenever they required their services. But matters were very different in the provinces, where almost every solicitor had to appear at times in the police courts or the county courts, and there were occasions when it was extremely difficult to find fees for counsel on the part of the struggling tradesmen and others who were the suitors. Very often the solicitor had to go short of the money he received from the client in order that counsel's fees might be paid. Poor people had often to pawn everything they possessed, and to borrow money from their friends in order to raise the necessary fees for counsel. He suggested that the practice of advocacy came to the solicitor branch of the profession through the county courts, and that the solicitor was no longer to be ignored in this respect by the Bar. The Bar had of late raised their fees, and they were absolutely appalling so as to render the penalty the losing litigant had to pay a very terrible one. In a small possession case in the county court he had known the costs to amount to £50, and the result to the poor wretch laden with counsel's fees was that his furniture was seized and his home was sold up. The law ought to be open to both rich and poor, without this frightful burden of costs, and he was hoping that at some time the reform he was advocating would be brought about, just as solicitors had to-day the right of advocacy in the county courts and the police courts. The sooner the solicitors were freed from the tyranny of the Bar the better it would be. It was argued in opposition to his suggestion that if the solicitors took away a privilege of the Bar, the Bar would want to take away the privileges of the solicitors; but, personally, he was not afraid on this account. In order to do the work of solicitors the members of the Bar would be compelled to have large staffs of clerks, and if the members of the Bar could be made responsible for negligence it would be found that a good many barristers would have to pay damages. It was also said that the proposal was in the nature of fusion. He did not like the idea of fusion. It was an American institution, and he was glad that he did not have to practise in America. He had also a sort of conservative regard for the Bar. Therefore, he should like to keep the Bar as a superior body, occupying a position similar to that of the doctors of Harley Street. Then people who needed their services could go to them, if they chose. The result would be that there would be a very fine class of men doing their special work, instead of a great many men doing all kinds of work, as at present. This was, as he had said, a question which affected more materially the larger body of the profession in the provinces. When he had brought the matter forward at a previous meeting he had come to the conclusion that it was not fair that the solicitors in the provinces should be excluded from expressing their views simply because they could not travel to London to be present at these meetings. Therefore, if he was defeated, he would ask those present, who were in his favour, to unite with him in demanding a poll. So long as he lived he would fight for this reform, and he hoped he should live long enough to see it carried into effect.

Mr. S. S. SEAL (London) seconded the motion. He said that Mr. Dodd's arguments were absolutely overwhelming in favour of extending to solicitors, at all events in the provinces, the right to act as advocates. Without doubt, many solicitors were fit for the position. He did not apprehend that this would meet with any disfavour on the part of the Bar, and it would certainly be of great assistance to the client in the direction of saving him expense.

Mr. E. BRABY (London) said that Mr. Dodd had said that his resolution did not amount to fusion, but he thought it was very difficult to say where the difference lay. The only thing that counsel did and that the solicitor was not allowed to do was to appear in the High Courts. The Society had already expressed its opinion with regard to fusion in no uncertain terms. They had very clearly given their opinion as a body by a large majority that they did not want fusion.

The PRESIDENT said that numbers on the poll were for fusion 1,820, against 3,531.

THE HOSPITAL FOR SICK CHILDREN,

GREAT ORMOND STREET, LONDON, W.C.1.

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The children of the Nation can truthfully be said to be the greatest asset the Kingdom possesses, yet the mortality among babies is still appalling.

FOR 71 years this Hospital has been the means of saving or restoring the lives and health of hundreds of thousands of Children, and of instructing Mothers in the knowledge of looking after their children.

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In consequence of the death of Sir Richard Muir, senior prosecuting counsel to the Crown at the Central Criminal Court, the Attorney-General has made the following appointments:—

SENIOR COUNSEL.

Mr. TRAVERS HUMPHREYS to be senior counsel.

Mr. EDWARD PERCIVAL CLARKE to be second senior counsel.

Mr. EUSTACE CECIL FULTON to be third counsel.

JUNIOR COUNSEL.

Mr. HENRY DALACOMBE ROOME to be first junior counsel.

Mr. ROLAND GIFFARD OLIVER to be second junior counsel.

Mr. GEOFFREY DORLING ROBERTS to be third junior counsel.

In consequence of the above appointment Mr. Roberts relinquishes his appointment as prosecuting counsel to the Crown at the North London Sessions, and the Attorney-General has appointed Mr. GEORGE BUCHANAN MCCLURE to be Crown prosecuting counsel at those sessions in the place of Mr. Roberts.

Mr. Travers Humphreys, who was called to the Bar by the Inner Temple in November, 1889, is Recorder of Chichester. He was appointed Treasury counsel at the Middlesex Sessions and the North London Sessions in 1905, and became junior counsel to the Treasury at the Central Criminal Court in 1908, and second senior counsel in 1916. He is a son of the late Mr. C. O. Humphreys, a London solicitor, and was educated at Shrewsbury School and Trinity Hall, Cambridge.

Mr. Edward Percival Clarke is the eldest son of Sir Edward Clarke, K.C., and has been Recorder of Exeter since 1922. He was educated at Eton and Trinity Hall, Cambridge, and was called to the Bar at Lincoln's Inn in November, 1894. His appointment as junior Treasury counsel at the Central Criminal Court was made in 1912.

Dissolution.

JAMES BALLANTYNE and ERNEST ALFRED CLIFFORD, solicitors, Dock House, Billiter-street, London, E.C.3 (Ballantyne, Clifford and Co.), 31st day of December, 1923. [*Gazette*, 18th January.

General.

Sir Herbert Stephen writes to *The Times* stating that he has undertaken, at the request of the Earl of Halsbury and the Dowager Countess of Halsbury, to write a memoir of the late Earl of Halsbury, which will be published by Messrs. Heinemann, and asking for the loan of material.

Judge Parry, at the Lambeth County Court, on Monday was called upon to decide whether the tenant of a house could, under s. 4 of the Rent Restriction Act, obtain an order for possession of rooms occupied by a sub-tenant on the ground that they were reasonably required for the use of the tenant's family. Ernest W. Hart, of Barry-road, East Dulwich, asked for possession of two rooms for the use of a son recently returned from Singapore and a married daughter. Mr. Nisbet, for the respondent, Miss Jeanette Shrimpton, maintained that the Act only applied to persons who bought their houses before 30th June, 1923, and not to those who were not the owners but only the tenants of a house. Judge Parry said that if Mr. Nisbet's argument was right nobody would be more pleased than he would be; but he must hold that the tenant in a house where there were sub-tenants became the landlord, and was entitled to possession of his sub-tenant's rooms if he reasonably required them. The point now raised had never been decided by the Divisional Court, and until another ruling was given, he was bound to hold that these rooms were a separate dwelling-house within the meaning of the Act, and that the landlord reasonably required them for his own use. He made an order for possession in two months.

THE MIDDLESEX HOSPITAL.

WHEN CALLED UPON TO ADVISE AS TO LEGACIES, PLEASE DO NOT FORGET THE CLAIMS OF THE MIDDLESEX HOSPITAL, WHICH IS URGENTLY IN NEED OF FUNDS FOR ITS HUMANE WORK.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
Monday Jan. 28	Mr. More	Mr. Hicks Beach	Mr. Jolly	Mr. More
Tuesday 29	Jolly	Bloxam	More	Jolly
Wednesday..... 30	Ritchie	More	Jolly	More
Thursday 31	Synge	Jolly	More	Jolly
Friday Feb. 1	Hicks Beach	Ritchie	Jolly	More
Saturday..... 2	Bloxam	Synge	More	Jolly

Date.	Mr. Justice Astbury.	Mr. Justice P. O. Lawrence.	Mr. Justice Russell.	Mr. Justice Tomlin.
Monday Jan. 28	Mr. Hicks Beach	Mr. Bloxam	Mr. Synge	Mr. Ritchie
Tuesday 29	Bloxam	Hicks Beach	Ritchie	Synge
Wednesday.... 30	Hicks Beach	Bloxam	Synge	Ritchie
Thursday 31	Bloxam	Hicks Beach	Ritchie	Synge
Friday Feb. 1	Hicks Beach	Bloxam	Synge	Ritchie
Saturday..... 2	Bloxam	Hicks Beach	Ritchie	Synge

Crown Office, House of Lords,
17th January, 1924.

Days and places fixed for holding the Winter Assizes 1924.

NORTH-EASTERN CIRCUIT.

Mr. Justice SALTER.
Mr. Justice ROCHE.

Tuesday, 26th February, at Newcastle.
Tuesday, 4th March, at Durham.
Tuesday, 11th March, at York.
Monday, 17th March, at Leeds.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert Valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-à-brac a speciality. [ADVT.]

Winding-up Notices.

JOINT STOCK COMPANIES.
LIMITED IN CHANCERY.

CREDITORS MUST SEND IN THEIR CLAIMS TO THE LIQUIDATOR AS NAMED ON OR BEFORE THE DATE MENTIONED.

London Gazette.—FRIDAY, January 18.

ENFIELD ALLDAY MOTORS LTD. March 1. C. H. Smith, Phœnix Chambers, Colmore-row, Birmingham.

CORNEY, HURN & CO. LTD. Jan. 31. R. C. Spicer, 5, Bank-plain, Norwich.

BOLTON COMMERCIAL PLATE GLASS INSURANCE CO. LTD. Feb. 26. John Hudson, 10, Acresfield, Bolton.

THE HERTFORD ENGINEERING CO. LTD. Feb. 26. E. R. Bishop, 22, Walbrook, E.C.4.

HUDSON TRUSTEES LTD. Feb. 29. Mr. William Sumner, 42, Castle-st., Liverpool.

London Gazette.—TUESDAY, January 22.

THE BRADFORD MOOR MOTORS LTD. Feb. 8. Tom Coombs, Oxford-chambers, Oxford-place, Leeds.

PAIGE MOTORS LTD. March 7. William Owen, 30 Richmond-rd., Kensington.

CITY TRANSPORT LTD. March 11. Fred P. Leach, Oxford-chambers, St. Stephens-st., Bristol.

Resolutions for Winding-up Voluntarily.

London Gazette.—FRIDAY, January 18.

Fisher, Brown & Bayley Ltd.
African International Corporation Ltd.
Malleable Fittings Ltd.
Banks Billiards Ltd.
Thomson Land & Wine Co. Ltd.
Amso (1922) Ltd.
Northam Brick Co. Ltd.
Pyrometa Ltd.
Kent Freehold & Minerals Ltd.
Madame Blake Ltd.
Cone Tube Co. Ltd.
P. J. White & Co. Ltd.
Montrose Diamond Mining Co. Ltd.
Ernest Foot Ltd.
A. S. Cartwright Ltd.
The Knowesgate Whinstone Co. Ltd.
Ferranti & Corbett Ltd.
J. A. & John Taylor & Co. Ltd.
Bovine Ltd.
United Brick Co. Ltd.
Peacock & Dixon Ltd.
Alex. Mosses Ltd.
T. S. Cheetham & Co. Ltd.
Jerseys Ltd.
Harrington Brothers (Nottingham) Ltd.
The G. H. Hudson-Harnell Manufacturing Co. Ltd.

London Gazette.—TUESDAY, January 22.

Yuanmi Gold Mines Ltd.
Harry Cocks Ltd.
Macedonian Oil Syndicate Ltd.
Engineering Gauge Co. Ltd.
Colwyn Bay Trading Co. Ltd.
Wheal Benallack China Clay Co. Ltd.
The King's Heath Firewood Co. Ltd.
Moore & Barker Ltd.
The Scottish Far Eastern Corporation Ltd.
R. Harrod Ltd.
R. C. Warren & Co. Ltd.
Brittanic Trawler Co. Ltd.
Elma Gear Box Co. Ltd.
Bermondsey British Legion and Services Club Ltd.
British Near Eastern Corporation Ltd.
Wheal Retallack China Clay Co. Ltd.
The Derby Tyre Co. Ltd.
The Gregge Street Manufacturing Co. Ltd.
Menco-Elma Syndicate Ltd.
Harpenden Building Co. Ltd.

Bankruptcy Notices.

RECEIVING ORDERS.

London Gazette.—FRIDAY, January 18.

ALLEN, AUBREY, Hove, Boarding House Keeper. Brighton. Pet. Dec. 18. Ord. Jan. 15.

AMOS, ALFRED O., Northampton, Poultry Farmer. Northampton. Pet. Jan. 16. Ord. Jan. 15.

BALL, ARTHUR L., Neath, Blacksmith. Neath. Pet. Jan. 15. Ord. Jan. 15.

BARKWAY, GEORGE, Ferndale, Rhondda, Grocer, Pontypridd. Pet. Jan. 14. Ord. Jan. 14.

BARNETT, ALFRED, South-st., E.C.2, Leather Merchant. High Court. Pet. Dec. 12. Ord. Jan. 15.

BARNETT, HARMAN, Brighton. Brighton. Pet. Dec. 11. Ord. Jan. 15.

BENDER, S., Wilson-st., Finsbury, Manufacturer's Agent. High Court. Pet. Dec. 10. Ord. Jan. 15.

BOSTOCK, ARTHUR, Coventry, Commercial Clerk. Coventry. Pet. Jan. 15. Ord. Jan. 15.
BRAY, ALLAN A., Tidworth, Motor Engineer. Salisbury. Pet. Dec. 13. Ord. Jan. 16.
CROSS, FRED, Huddersfield, Licensed Victualler. Huddersfield. Pet. Jan. 14. Ord. Jan. 14.
CROMBIE, HAROLD A., Piccadilly, Company Director. High Court. Pet. Oct. 22. Ord. Jan. 10.
CROSSETT, MATTHEW, Belbroughton, Farmer. Worcester. Pet. Jan. 15. Ord. Jan. 15.
D'AVIDOR, WALDO P. H., Acton. Brentford. Pet. Dec. 13. Ord. Jan. 14.
DICKLIN, WILLIAM, Great Portland-st., Motor Car Agent, High Court. Pet. Nov. 28. Ord. Jan. 15.
FIRTH, EDWARD, Kingston-upon-Hull, Coal Dealer. Kingston-upon-Hull. Pet. Jan. 15. Ord. Jan. 15.
FOARD, ALFRED M., and CLAPHAM, HARRY, Buxton, Fruiterers, &c. Stockport. Pet. Jan. 14. Ord. Jan. 14.
GOSS, FREDERICK, Bishops Tawton, Innkeeper. Barnstaple. Pet. Jan. 14. Ord. Jan. 14.
HALLATT, FRANK, Sheffield, Hairdresser. Sheffield. Pet. Jan. 14. Ord. Jan. 14.
HALL, FREDERICK, Mardy, Glam., Colliery Repairer. Pontypridd. Pet. Jan. 14. Ord. Jan. 14.
HOOLE, LIONEL R., Boughton Aluph, Kent, Boarding-house Keeper. Canterbury. Pet. Jan. 16. Ord. Jan. 16.
JACKSON, ERNEST G., Kingston, Surrey. Kingston. Pet. Jan. 16. Ord. Jan. 16.
JOW, WILLIAM N., Roehampton. High Court. Pet. Jan. 14. Ord. Jan. 14.
KENDRICK, JOHN, Sheffield, Joiner. Sheffield. Pet. Jan. 14. Ord. Jan. 14.
LANE, BERTIE, Middlesbrough, Tailor. Middlesbrough. Pet. Jan. 15. Ord. Jan. 15.
LEAVITT, JOHN, York, Tailor. York. Pet. Jan. 15. Ord. Jan. 15.
LEWIS, EDWARD, Swinton, Yorks., Cycle Dealer. Sheffield. Pet. Jan. 15. Ord. Jan. 15.
LUCAS, Dr. VICTOR ST. C., Farnworth, near Bolton. Bolton. Pet. Nov. 8. Ord. Jan. 16.
MANSON, DAVID, Mortimer-st., W.1, Book-keeper and Cashier. High Court. Pet. Jan. 14. Ord. Jan. 14.
MITLER, ALFRED J., Swansea, Baker's Assistant. Swansea. Pet. Jan 16. Ord. Jan. 16.
NICHOLLS, ERNEST T., Watchett Somerset, Coal Merchant. Taunton. Pet. Jan. 15. Ord. Jan. 15.
NUNNING, THOMAS H., Lincoln, Wholesale Confectioner. Lincoln. Pet. Jan. 14. Ord. Jan. 14.
RANDALL, A. (a Firm), Executors of Saw Mill Proprietors. Blackpool. Pet. Dec. 18. Ord. Jan 11.
ROBINSON, ARTHUR P., Wakefield, Master of Foxhounds. Leominster. Pet. Dec. 13. Ord. Jan. 15.
ROSENSTEIN, MORRIS, Pontypridd, Wallpaper and Paint Merchant. Pontypridd. Pet. Jan. 14. Ord. Jan. 14.
SHERD, HERBERT, Halifax, Hardware Dealer. Halifax. Pet. Jan. 15. Ord. Jan. 15.
SHEEL, HAROLD, Ebury-st., Engineer. Wandsworth. Pet. Jan. 15. Ord. Jan. 15.
SPOFFALL, LILY, Batley, Confectioner. Dewsbury. Pet. Jan. 16. Ord. Jan. 16.
SACK, PETER O., Bridport, Laundryman. Dorchester. Pet. Jan. 14. Ord. Jan. 14.
STEAD, HAROLD W., Kingston-upon-Hull. Kingston-upon-Hull. Pet. Nov. 21. Ord. Jan. 15.
STONE, THOMAS E., Avonmouth, Tailor. Bristol. Pet. Jan. 14. Ord. Jan. 14.
STONEHOUSE, ROBERT A., Redcar, Coal Factor. Kingston-upon-Hull. Pet. Jan. 12. Ord. Jan. 12.
SWANN, WILLIAM, Church Gresley, Derby, Grocer. Burton-on-Trent. Pet. Jan. 14. Ord. Jan. 14.
THOMAS, CYRIL J. C., Tenby, Hairdresser. Haverfordwest. Pet. Jan. 16. Ord. Jan. 16.
THOMAS, GEORGE H. H., Mardy, Glam., Assistant Colliery Timberman. Pontypridd. Pet. Jan. 16. Ord. Jan. 16.
TROTT, ARTHUR, Sheffield, Cutlery Manufacturer. Sheffield. Pet. Jan. 12. Ord. Jan. 12.
WARD, ERNEST, Longton, Hardware Dealer. Hanley. Pet. Jan. 14. Ord. Jan. 14.
WEBB, THOMAS H., Victoria-st., Motor Engineer. High Court. Pet. Dec. 5. Ord. Jan. 14.
WELLINGTON, ARTHUR, Whitestone, nr. Exeter, Baker. Exeter. Pet. Jan. 14. Ord. Jan. 14.

London Gazette.—TUESDAY, January 22.

BARBER, EDWIN, Clowne, Derby, Hairdresser. Sheffield. Pet. Jan. 10. Ord. Jan. 16.
CADWALLADER, WILLIAM D., Rhiston, Salop, Farmer. Newtown. Pet. Jan. 18. Ord. Jan. 18.
CARLEY, ANNIE M., Chester. Chester. Pet. Jan. 17. Ord. Jan. 17.
COHEN, ABRAHAM, Muswell Hill-rd., Merchant. High Court. Pet. Dec. 19. Ord. Jan. 18.
DENPSTER, Lieut.-Col. J. F., Great Woodstock-st. High Court. Pet. Sept. 27. Ord. Jan. 18.
DODDS, JOHN M., Bishopston, Bristol, Firelighter Manufacturer. Bristol. Pet. Jan. 17. Ord. Jan. 17.
GARDINER, W. R., Little Portland-st., W. 1, Decorator. High Court. Pet. Jan. 17. Ord. Jan. 18.
HIGGS, CHARLES W., Stone-bldgs., Lincoln's Inn, Solicitor's Clerk. High Court. Pet. Aug. 25. Ord. Jan. 16.
GUNNEY, JOE P., Liskeard, Wood Dealer. Plymouth. Pet. Jan. 19. Ord. Jan. 19.
HARGRAVES, CECIL M., and MINCHIN, ALBERT E., Fleet-st. High Court. Pet. Sept. 14. Ord. Jan. 16.
HARRIS, ALFRED, Falcon-sq. High Court. Pet. Dec. 31. Ord. Jan. 16.
HAWKINS, FREDERICK A., Dunstable, Motor Driver. Luton. Pet. Jan. 19. Ord. Jan. 19.
HAYLES, WILFRED H., Ryde, Draper. Newport. Pet. Jan. 16. Ord. Jan. 16.
HOGNAN, J. DOUGLAS, Finchley. Barnet. Pet. Nov. 29, Ord. Jan. 17.
JACOBS, JOSEPH, trading as United States Import Company, Jewin-crescent, Leather Goods Merchant. High Court. Pet. Dec. 28. Ord. Jan. 16.
JAMES, ROSA M., High-st., Peckham, Boot Retailer. High Court. Pet. Dec. 29. Ord. Jan. 17.
KANE, AUGUSTUS, Blackburn, Seedsman. Blackburn. Pet. Jan. 12. Ord. Jan. 17.

WESTMINSTER
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Reserve - - - £9,003,718

Current, Deposit, & other Accounts
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MACE, ROBERT S., Birmingham, General Brassfounder. Birmingham. Pet. Jan. 3. Ord. Jan. 17.
MANCHESTER, CALEB J. W., Bayswater. High Court. Pet. Oct. 13. Ord. Jan. 16.
MASON, JOHN, Birmingham, Manufacturing Jeweller. Birmingham. Pet. Jan. 18. Ord. Jan. 18.
MCCLELLAN, SAMUEL, New Longton, near Preston, Credit Draper. Preston. Pet. Dec. 7. Ord. Jan. 17.
MIDDLETON, THOMAS H., Gautby, Lincoln, Market Gardener. Lincoln. Pet. Jan. 18. Ord. Jan. 18.
MILLER, RICHARD P., Menai Bridge, Cycle and Motor Engineer. Bangor. Pet. Jan. 18. Ord. Jan. 18.
MILLS, ARTHUR W., Hounslow. Brentford. Pet. Aug. 23. Ord. Jan. 16.
MORRIS, EVAN, Penparke, near Aberystwyth, Tailor. Aberystwyth. Pet. Jan. 14. Ord. Jan. 14.
PLANT, JOSEPH, Glossop, Painter. Ashton-under-Lyne. Pet. Jan. 19. Ord. Jan. 19.
POWER, ARTHUR, Finchley, Clothier. High Court. Pet. Jan. 19. Ord. Jan. 19.
POWER, JOHN L., Gainsborough. Lincoln. Pet. Dec. 19. Ord. Jan. 16.
ROBERTS, THOMAS, Shop Isaf, Maentwrog, Merioneth, Grocer. Portmadoc. Pet. Jan. 17. Ord. Jan. 17.
ROSCOE, JAMES, Ince, in Makerfield, Lancs, Licensed Victualler. Wigan. Pet. Jan. 12. Ord. Jan. 17.
SANDAY, WILLIAM D. S., Sloane-st. High Court. Pet. Dec. 15. Ord. Jan. 17.
SMITH, HAROLD W., Leicester, Civil Service Clerk. Leicester. Pet. Jan. 17. Ord. Jan. 17.
TALBOT, BERNARD, and TALBOT, LAVINIA, Droyladen, Motor Engineers. Ashton-under-Lyne. Pet. Jan. 19. Ord. Jan. 19.
TOMLINSON, ERNEST A. R., Brixton, late Insurance Manager Wandsworth. Pet. Nov. 14. Ord. Jan. 17.
WALDMEYER, ALBERT, Gutter-lane, Cheapside, Fancy Goods Dealer. High Court. Pet. Dec. 18. Ord. Jan. 17.
WILCOX, SAMUEL, Knutton, Staffs, Grocer. Hanley. Pet Jan. 17. Ord. Jan. 17.
WILLAN, TOM G., Sutton-in-Ashfield, Coal Miner. Nottingham. Pet. Jan. 19. Ord. Jan. 19.

The Solicitors' Law Stationery Society, Limited.

SHORTHAND NOTES of Cases taken in the High Court and in Arbitration.
: : Companies Meetings Reported. : :

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LONDON, FEBRUARY 2, 1924.

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*** The Editor cannot undertake to return rejected contributions, and copies should be kept of all articles sent by writers who are not on the regular staff of the JOURNAL.

All letters intended for publication must be authenticated by the name of the writer.

GENERAL HEADINGS.

Cases Reported this Week.

Current Topics.

The Meeting of The Law Society.

THE SPECIAL General Meeting of The Law Society, held on 25th January, which we report elsewhere, had some exceptionally interesting matter for discussion. Mr. JAMES DODD raised again the question of the establishment at the Law Courts of a Central County Court for the clearance of county court actions in the London district. As to the desirability of such a court there seems to be general agreement, and the only difficulty is in getting the Lord Chancellor or the Lord Chancellor's department to act. Possibly Lord HALDANE will now take the matter up. The grant to solicitors of the right of audience in all courts co-equal with that of barristers—also raised by Mr. DODD, and forcibly advocated by him in a letter which we print elsewhere—is by no means a subject of agreement, and it was negatived at the meeting by fifty-eight to thirty-two. A poll was duly demanded, and will be taken, and the result made known on the 22nd inst. We express our opinion on the question on another page. The change from item bills to lump sum bills of costs is, we believe, desired by solicitors with practical unanimity, but the progress of this reform also is checked by the *inertia*—if we may so call it—not of any particular Lord Chancellor, but of the succession of Lord Chancellors. And meanwhile, as we have several times observed, the report of Mr. Justice RUSSELL'S Committee is carefully withheld. Here, too, something may reasonably be expected of Lord HALDANE'S Chancellorship. At the same time changes of this kind should not depend on successions, rapid or otherwise, to the office of Lord Chancellor. Was it not Lord BIRKENHEAD who said that in such matters the work of the department was continuous? The Lord Chancellor may pass, but—to AMURATH an AMURATH succeeds.

The Lord Advocate and a Labour Ministry.

IT IS INTERESTING that Mr. RAMSAY MACDONALD'S only unsolved problem as regards the constitution of a Labour Ministry has been his inability to find a Scots Advocate to fill the important office of Lord Advocate. Of course, this is not so very surprising as it may seem, for the Scots Bar is a very small body; most first instance litigation north of the Tweed is commenced in the Sheriff Court, which has practically unlimited jurisdiction, and in which writers (*anglice*, solicitors) are the usual practitioners. In Scotland, curiously enough, the office of Lord Advocate is subject to the rule which in England applies to the Throne—there cannot be a vacancy by resignation, and each Lord Advocate remains such until the seals of office have been accepted by a successor. The reason is that in Scotland prosecutions are laid, not in the name of the King, but in that of the Lord Advocate, so that a vacancy in the office would terminate all criminal business. Moreover, the Lord Advocate, or one of his four Advocates-Depute, who correspond to English Treasury counsel, authorizes all prosecutions; a private person cannot prosecute without the authorization, by mandate or otherwise, of the Lord Advocate, and this has only been given twice in the recorded legal history of Scotland. The Lord Advocate, too, is nominally a member of the Court of Session; this consists of the Lord President, Lord Advocate, Lord Justice-Clerk, and eleven Lords Ordinary; but no Lord Advocate ever acts as a judge. Again, curiously enough, Lords of Session—and presumably the Lord Advocate, although this is doubtful—need not be advocates: any legal practitioner or graduate in Laws can be appointed. But this was last done in 1662, at the Restoration, when the Scots Law—displaced by CROMWELL'S Judges—was restored and, owing to loss of records, it was found necessary to appoint the most learned lawyer of the day as Lord President to restore memory of the ancient laws of the country. This was DALRYMPLE OF STAIR, then a Professor of Scots Law in Glasgow University. A month ago it was rumoured in Parliament House that, failing acceptance of office by some distinguished advocate, Mr. RAMSAY MACDONALD contemplated the revival of this ancient right by offering the appointment to a Scots Professor in the University of Glasgow, who is a writer; but whether either party to this rumoured arrangement has really considered it favourably, is a matter of the greatest doubt.

The Operation of the New System of Conveyancing.

A CORRESPONDENT, whose letter we print elsewhere, usefully calls attention to some questions of practical difficulty which are likely to arise in the working of the new system of conveyancing. Probably most students of the Law of Property Act, 1922, have found it by no means easy to appreciate the exact operation of s. 3 (6) which he quotes. This depends on the scheme of legal and equitable interests, and on the extended facilities for overreaching equitable interests by means of trusts for sale and settlements. It is quite possible that, as our correspondent points out, the sub-section, by requiring the consent of a person entitled to an equitable interest having priority to a legal estate, may cause that interest to be brought on the title, and this is opposed to the scheme of the Act. Since, however, that scheme is now being reproduced in the Consolidation Bills, and may possibly undergo some change, it is better to wait until those Bills have been published before any further detailed consideration is given to the matter. With regard to second mortgages, it is true that these will in future be legal term mortgages; but it should be possible, by requiring indorsement on one of the prior title deeds, to secure that a purchaser shall have notice. Here, too, it will be convenient to wait and see whether any provisions designed to meet the point will be contained in the Consolidating Bills.

The Young Offender.

WE WERE interested on Wednesday in an article in the *Morning Post*, "A Young Offender: the Modern Method of Reform." It narrated the capture of JOHNNIE DALTON, aged ten, past midnight in a London suburb, as he was wriggling beneath the iron gates of a factory:—

> A sudden light made him look up and blink. Towering above him he saw a policeman with a bull's-eye lantern. The youngster would have slipped back again, but a strong arm seized him, drew him out and set him on his feet.
>
> "What are you doing here, my boy?" asked the policeman.
>
> "Nuffink, sir."
>
> "Come, come," was the kindly answer. "I think we know each other. You were helping some men to enter the factory, but they were disturbed and left you in the lurch."
>
> "Yes, sir."
>
> "Well, you had better come along with me."

And so to the Pentonville Remand Home for Boys, and "thus there began for him a series of new experiences, which changed his life, at the moment so dark and unfortunate." "The spotless cleanliness of the Home, the ample meals, the discipline of class instruction, and the kindly words of the superintendent pierced JOHNNIE'S cloudy intelligence like light in darkness." There followed after a few days his appearance at the Children's Court, and as the result his entry into an Industrial School. This episode we take the liberty of re-printing on another page. And owing to the methods of the school, "to-day he is a sturdy little fellow, proud of his name, JOHNNIE DALTON, and with every promise of being a credit to himself and to his country." That is one picture. But it so happens that on 9th January *The Times* reproduced from its issue of that day, in 1824, a very different picture. This also we take the liberty to print on another page. The contrast is striking. It may be that the story in the *Morning Post* is a little idealistic. Even an Industrial School is not always an Earthly Paradise. But certainly in the treatment of the child offender we are getting on.

The Filing of a Preliminary Act in Admiralty.

IN AN ADMIRALTY action, we hardly need say, there exists a pleading, supplementary to the normal Statement of Claim, Defence, Reply, etc., which is not known elsewhere—namely, the "Preliminary Act." This is filed by each party *before* he sees the other's pleadings, and sets out his version of certain important matters of fact—latitude and longitude of the locale, strength and direction of the wind, directions and speed of courses, lights shown, signals, and the like. Now in *The Saxicava, Times*, 30th ult., a question of practice, the importance of which will be obvious, has arisen in connexion with the filing of the "Preliminary Act." In this case a collision occurred on 12th September, 1923, between the Greek steamship *Despina* and the British steamship *Saxicava*. Next day, the Greek owners, as plaintiffs, commenced an action *in rem* in the Gibraltar Vice-Admiralty Court, but withdrew the action after some correspondence which disclosed clearly the fact that the British owners relied on a counter-claim for damages. On 14th September, two days after the collision, the British owners commenced an action *in rem* in England against the owners of the *Despina*; but this action proved abortive, as the vessel had sunk and her owners were foreigners who on their personal character were outside the jurisdiction of such an action. But on 17th September, the Greek owners of the *Despina* commenced proceedings *in personam* in England against the British owners of the *Saxicava*. The defendants desired to counter-claim, but on 5th January of this year the plaintiffs gave notice of discontinuance; they had thus discontinued—first in Gibraltar, and afterwards in England—two actions in which the British owners could have counter-claimed. The defendants, anxious to have the issue between the parties tried out, then applied to the Registrar to order the filing of the Preliminary Act by the parties; this in substance is refusal of leave to discontinue, and would have enabled the defendants to bring their counter-claim to trial. This raises the question whether a counter-claim can be set up notwithstanding that there is no claim before the court, a point considered previously, but not finally decided, in *The Salybia*, 1910, P. 25, and in *Whiteley's Case*, 1900, 1 Ch. 365. The President now held that a counter-claim cannot be proceeded with after abandonment of the action, unless there are pleadings raising a claim; therefore a Preliminary Act cannot be ordered.

Counter-claims and the Judicature Acts.

THE QUESTION whether counter-claims can be set up in a High Court action, after the plaintiff has discontinued before pleadings have been ordered, is not, of course, in any way peculiar to the Probate, Divorce and Admiralty Division. It arises out of s. 24 of the Judicature Act, 1873, which in effect substituted counter-claims for cross-actions, and the Rules of the Supreme Court made to give effect thereto. By Ord. 21, r. 16, it is provided that "If, in any case in which the defendant sets up a counter-claim, the action of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with." This is not conclusive, however, because these words obviously contemplate an action which has proceeded so far that a Statement of Claim has been delivered (or in Ord. 14 and Ord. 30 proceedings expressly dispensed with by Order of the Master) and a Counter-claim delivered or ordered in reply. It does not affect the case where discontinuance takes place before pleadings have been delivered or even ordered. Again, Ord. 19, r. 3, provides: "A defendant in an action may set-off, or set up by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a cross-action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross-claim . . ." Ord. 21, r. 10, directs that a counter-claim shall be set up in the defence. These provisions seem to indicate that a counter-claim can only be set up by way of pleading and in due course of pleading, so that it is not available to a defendant, where the plaintiff has discontinued before pleadings. Mere intimation of the defendant, by letter or otherwise, that he has a counter-claim and intends to set it up, can scarcely be regarded as sufficient.

What constitutes Matrimonial Desertion.

THE WIDE LEGAL meaning attributed to the word "desertion" in relation to matrimonial differences is well illustrated by the decision in the recent case of *Thomas* v. *Thomas*, reported elsewhere, where the Court of Appeal affirmed a decision of the Divisional Court of the Probate, Divorce and Admiralty Division, which had held that the justices were right in finding that desertion had been proved under the following circumstances, and in making an order under the Summary Jurisdiction (Married Women) Act, 1895. The marriage in question took place in 1914, and the husband from time to time ill-treated his wife. In June, 1922, he quarrelled with her and ordered her to leave the home. Her parents warned him that if she went she would not return, but he repeated the order and told her that she might take two of the children with her. On the following day he repented, and then, and on subsequent occasions, begged her to return. The Master of the Rolls, in the course of his judgment, said that the justices had acted rightly in considering the conduct of the husband as a whole, and dismissed the appeal. Reference was made to the illuminating judgment of GORRELL BARNES, J., in *Sickert* v. *Sickert*, 48 W.R. 266, 1899, P. 278. In that judgment the material meaning of "desertion" will be found lucidly expounded. That learned judge said: "In order to constitute desertion there must be a cessation of cohabitation and an intention on the part of the accused party to desert the other. In most cases of desertion the guilty party actually leaves the other, but it is not always necessarily the guilty party who leaves the matrimonial home. In my opinion, the party who intends bringing the cohabitation to an end, and whose conduct in reality causes its termination, commits the act of desertion. There is no substantial difference between the case of a husband who intends to put an end to a state of cohabitation, and does so by leaving his wife, and that of a husband who, with the like intent, obliges his wife to separate from him."

Wilful Abandonment of Conjugal Society.

THE PRESENT DECISION seems to stretch this somewhat paradoxical meaning of the word "desertion" further than has been done in previous cases. To the lay mind the word doubtless always connotes departure. Thus mutineers would hardly be accused of deserting their ship, if, after casting the captain and officers adrift, they themselves proceeded on the voyage. Moreover, such meanings are given to the verb "desert," in dictionaries such as that of Dr. JOHNSON and the New English Dictionary, as "forsake," "leave," "abandon," "depart from." When, however, we try to find out exactly what it is that is being abandoned, we are aided by the legal definition of "desertion" in the latter dictionary, *i.e.*, "wilful abandonment of the conjugal society, without reasonable cause, on the part of a husband or a wife." Having appreciated that it is the abandonment of an abstract and not a concrete entity: *i.e.*, the "conjugal society," and not the "home"—which constitutes the desertion, we no longer see any paradox in the application of the term to the conduct of a man who, after treating his wife with persistent cruelty, drives her from home, even though he afterwards repents and begs her to return.

A Novelty of Bar Etiquette.

AMONG THE QUESTIONS pronounced upon last year by the General Council of the Bar, and summarized in their recent annual report to the Bar under Etiquette, there is one which sounds rather like an extract from a Gilbert and Sullivan Opera. It seems that some newspaper inserted a statement to the effect that a certain barrister's name, as published in press reports of cases in which he appeared, was not his true name. The barrister sent a notice to the paper stating that it *was* his true name, and signed it from his professional address. Someone complained of this as "advertising," but both the barrister's Benchers and the Bar Council have naturally held that it is not. The Bar Council's report, however, expresses its decision in a solemn formula, which in substance says that a barrister is not guilty of a breach of professional etiquette in correcting a press error as to his name!

High Court Audience for Solicitors.

WE hope that in voting on the poll demanded by Mr. DODD on his resolution in favour of solicitors having the right of audience in the High Court, which was defeated in the Law Society's Hall at the last meeting, no solicitor will be led away by the attractive idea of sharing a privilege now enjoyed by the Bar without making concessions that are certain to be asked for in return.

There can be no doubt that any such proposal would be strenuously opposed by the Bar, and, if it should be granted, would only be granted in consideration of barristers having the same rights as solicitors.

Solicitors already have the right of audience in the County Court, the Police Courts, all arbitration tribunals and in Chambers in the High Court, and yet we know that a very great number of these cases are entrusted to barristers, a clear indication that in the opinion of many solicitors it is better for the clients that these cases should be so conducted. It will be time enough to claim a share in the privileges of the Bar when it is found that solicitors exercise their own privileges to the full.

The claim made by Mr. DODD's motion, if carried, would involve the loss of the substance of the privileges of solicitors for the shadow of an extension of their rights to the High Court, a very doubtful advantage which would only in a very few instances be made use of.

The arguments based on the practice in America and the Colonies are misleading, for it is well known that in these cases the work of the solicitor and the barrister is kept distinct.

This motion, it must be remembered, is nearly allied to the motion in favour of complete fusion of the two branches of the profession, which was submitted to a poll of the Law Society in 1919, and then defeated by an overwhelming majority, and it is a matter of regret, we think, that the members of the Society should now be put to the trouble and expense of a poll on this kindred subject.

The Law Society are doing much to protect solicitors from the insidious attacks that are constantly being made on their privileges, and we venture to think that the members of the Law Society would be better engaged in endeavouring to protect their own rights rather than in making an attack on the rights of others. We hope the result of the poll will confirm the decision of the meeting by rejecting the proposal.

Purchaser's Liability for Interest when Completion Delayed.

V.

(*Continued from p.* 317.)

(*c*) As to the Rate of Interest to be Paid and as to who is Entitled to the Interest made by the Deposit.

In Dart's Vendors and Purchasers, 7th Ed., p. 650, it is stated that where there is no special agreement, interest, when payable, is payable at law at such rate, not exceeding £5 per cent., as may be allowed by the jury, and in equity, now, as a general rule, at the rate of £3 per cent. per annum; but as unpaid purchase money is a debt, it seems the rate may still be £4 per cent. This is somewhat vague.

It is submitted that at the present time the rule as to the rate of interest to be paid by a purchaser, when he has to pay interest, is definitely £4 per cent. per annum. Stirling, J., in *Re Lambert*, 1897, 2 Ch. 169, said that £4 per cent. is the "rate of interest which is charged according to the rules on *debts* which are provable in administrations, and as to which there is no special provision as to their bearing interest. The rule as to the interest payable on debts has not yet been altered, and that remains the rate at which interest is charged on debts." This statement was referred to with approval in *Re Whiteford; Inglis* v. *Whiteford*, 1903, 1 Ch. 889. Interest on purchase money would seem to be governed by the same rule.

As regards compound interest it is not the practice of the court to allow anything in the nature of compound interest (*Silkstone and Haigh Moor Coal Co. and Edey*, 1900, 1 Ch. 167; *Re Lord Magheramorne's Estate*, 1901, W.N. 152).

There is one special case which should be mentioned, namely, where a purchaser is purchasing the equity of redemption in property. If in such a case the purchaser takes possession before the date fixed for completion, the interest which will be due from him to the vendor on completion will be set off against the interest on the mortgage which the vendor will have to allow the purchaser, even although the interest on the mortgage be at a higher rate than the interest payable under the contract (*Wallis* v. *Bastard*, 1853, 4 D.M. & G. 251).

As regards any interest made by the deposit, it is stated in Williams' Vendor and Purchaser, 3rd Ed., pp. 27 and 28, in effect, that on London sales it is usually provided that the deposit shall be paid into the hands of the auctioneer, but that on country sales the vendor's solicitor is usually appointed to receive it. But that whenever the auctioneer or the solicitor receives the deposit as a stakeholder, and not in the character of agent of one of the parties, he is entitled to retain for his own use any interest made by the investment of the money whilst it remains under his control. See also the cases cited, namely, *Wiggins* v. *Lord*, 1841, 4 Beav. 30; *Hall v. Burnell*, 1911, 2 Ch. 551.

(*d*) As to whether a Purchaser is Entitled to Deduct Income Tax from Interest payable by Him to his Vendor.

Mr. Konstam in his book on the Law of Income Tax, second edition, published in 1923, states quite clearly that in his opinion a purchaser can do so.

Before the passing of the 1918 Income Tax Act it was generally understood that the question depended upon the proper construction of s. 40 of the 1853 Income Tax Act, as amended by the Revenue (No. 1) Act, 1864, s. 15, the material part of which is as follows: "Every person who shall be liable to the payment of any . . . yearly interest of money . . . as a personal debt or obligation by virtue of any contract, whether the same shall be received or payable half-yearly or at any shorter or more distant periods, shall be entitled and is hereby authorised, on making such payment, to deduct and retain thereout the amount of the . . . income tax . . . chargeable . . . upon or in respect of such interest . . . during the period through which the same was accruing." The words in the section which raised the difficulty which had to be decided by the court were "yearly interest of money." It was held that these words meant interest which *may* become payable at a future date. For instance, if a banker made a loan to a customer on the terms that the principal and interest were to be paid in three months' time, it is obvious that a definite three months' interest could not be "any yearly interest of money," but, interest on purchase money, although not likely to go on for a year, yet *might* do so, and consequently it was held that it came within the words of the section: see *Bebb* v. *Bunny*, 1854, 1 Kay & J. 216; *Goslings and Sharpe* v. *Blake*, 1889, 23 Q.B. Div. 324; *Re Craven's Mortgage*, 1907, 2 Ch. 448.

So that, up to the date of the passing of the 1918 Income Tax Act, it was perfectly clear that a purchaser was entitled to deduct the tax.

We now come to the 1918 Act. This Act repealed s. 40 of the 1853 Act. If the Act had re-enacted s. 40 word for word, no possible doubt could have arisen. It does seem a pity that when a section has received careful judicial explanation and the effect of the section has been definitely settled, it should not be adopted *verbatim* in a consolidation Act.

The nearest provision in the new Act to s. 40 of the old Act is r. 19 (i) of the General Rules applicable to all the schedules to the 1918 Act. The material part of this rule is: "Where any yearly interest of money . . . (whether payable . . . or as a personal debt or obligation by virtue of any contract, or whether payable half-yearly or at any shorter or more distant periods), is payable *wholly out of profits or gains* brought into charge to tax, no assessment shall be made upon the person entitled to such interest . . . but the whole of those profits or gains shall be assessed and charged with tax on the person liable to the interest . . . and the person liable to make such payment, whether out of the profits or gains charged with tax or . . . shall be entitled, making such payment, to deduct and retain thereout a sum representing the amount of the tax thereon at the rate or rates of tax in force during the period through which the said payment was accruing due."

The words of difficulty in the above rule are "payable wholly out of profits or gains."

The learned Editor of "Dowell on the Law of Income Tax," 8th Ed., p. 599, says, "Section 40 of the Income Tax Act, 1853, is repealed by the present Act, but the following provision—the portion quoted above—of that section is not reproduced in this Act." The following statement also appears on the same page: "With reference to the above s. 40, Lord Watson said, in *Gresham Life Assurance Society* v. *Styles*, 1892, A.C. 309, that it had no application to annual payments payable out of profits or gains."

If the words had been "payable wholly out of *the property*, profits or gains," there could have been no doubt that they would apply to interest on purchase money. These are the words used in s. 1 of the 1918 Act, when enacting that income tax shall be charged "in respect of all property, profits or gains respectively comprised in the Schedules A, B, C, D and E." It might be thought that a distinction was here drawn between rent or interest in respect of property and profits and gains in a business.

But Lord Davey, in *London County Council* v. *Attorney-General* 1901, A.C. 39, referring to the earlier Act, said, "I construe the words 'profits or gains brought into charge by virtue of this Act' as including all annual income charged with the tax under any of the Schedules and not confined to profits charged

under Schedule D." And Lord MACNAGHTEN in the same case said, "And it is to be observed that the expression 'profits or gains' which occurs so often in the Income Tax Acts, is constantly applied without distinction to the subjects of charge under all the Schedules."

Finally we come to Mr. KONSTAM'S statement of the law on pp. 187 and 188 of his book on "The Law of Income Tax." He says that the right to deduct tax on interest paid out of taxable profits applies to yearly interest only. Then he explains what "yearly interest" means, and then he says, "Tax is, therefore, deductible on paying interest on the purchase money of real estate after the date fixed for completion." And in a note he refers to *Bebbs* v. *Bunny*, already referred to. He also in a note says, "General Rules, r. 19 (i); this rule corresponds with s. 40 of the Income Tax Act, 1840." He does not, however, refer to the difference in the wording between r. 19 (i) of the 1918 Act and s. 40 of the 1853 Act. He does not say also why he limits the rule to "real" estate. There seems no reason why it should not equally apply to leasehold property.

On payment of purchase money *into court*, the deduction of tax will not be allowed, on the ground that payment into court is not payment to the party as against whom the purchaser is entitled to deduct the tax (*Holroyd* v. *Wyatt*, 1847, 1 De G. & S. 125; *Bebb* v. *Bunny*, 1854, 1 Kay & J. at p. 219).

L. E. E.

(*Concluded.*)

Reviews.

Company Law.

ONE THOUSAND QUESTIONS AND ANSWERS ON COMPANY LAW. By HENRY ALLEN ASHTON, Managing Director, The London Financial Service, Ltd. The London Financial Service, Ltd. 5s.

Mr. Ashton's endeavour has been to compress as much information as possible on Company Law into the proverbial nutshell. The questions raise a great number of points on which business men may desire guidance, and the answers are given with commendable brevity and clearness. They are founded on an extensive and minute examination of statutes, cases, and the leading text books, and the shortest answer sometimes embodies an exceptionally important point of law. To question 662: "Is a bonus in the form of fully-paid shares income for the purpose of super-tax," the answer is "No," but that short answer of course depends on one of the most interesting of the recent decisions of the House of Lords. Mr. Ashton rarely gives any reference to cases, and the reader can exercise his ingenuity by tracing the answers to their sources. This can be done, for instance, in a bonus question (103), one to which the answer cannot be given quite so shortly: "When a company declares a bonus, is it to be treated as capital or income?" The answer is "Payments out of accumulated profits of past years are not necessarily capital; the inquiry whether they have been converted into capital or not is one of fact depending upon the circumstances of the case." Quite as good an answer as can shortly be given, and, like the other answer just quoted, it is based upon a well-known decision of the House of Lords; but for practical application it would be necessary to know in what way particular circumstances affect the result. That, as readers of the law reports know, is a matter which is continually receiving judicial elucidation. There is another bonus question (216) with a monosyllabic answer: "Can shares of a company be issued by way of bonus or gift?" Mr. Ashton answers "No"; but this looks as though the expression "bonus share" was meaningless. No doubt the bonus share here is one issued solely as a gift.

Decisions of the House of Lords are responsible for a good many of the answers, but this is because nearly all the fundamental principles of Company Law have at some time or other been laid down by that tribunal. "What," runs another question (487), "is the real meaning of the phrase 'such charge is to be a floating security.'" The answer, perhaps, evades the point, and shows rather how a floating security is created than its nature when created, but it suggests a well-known judgment of Lord Macnaghten's. We should say, however, that another question (28) asks as to the difference between a fixed and a floating debenture. How a landlord can get his rent in a winding up is the subject of five questions (571-575), and company practitioners will know that here again Mr. Ashton must have had recourse to well-known decisions. No one, we suppose, could ask and answer a thousand questions on Company Law without inviting criticism, and when we read (question 666) that a "balance order" is "an order of the Court for the collection of assets in lieu of an action," this seems hardly consistent with the more correct answer to question 223, "What is the proper method of enforcing calls in a voluntary or compulsory winding up?" namely, "By obtaining an order known as a 'balance order.'" Sometimes the questions are rather practical than legal; *e.g.*, "864. What is the principal object of a reconstruction? The raising of further capital." And sometimes they suggest a conundrum, such as "706. Can two successive Special Resolutions be passed in three meetings?" The answer is "Yes," but it is left for the ingenious secretary to arrange. Question 899 "Is the statement that something will be done a statement of fact," enables Mr. Ashton to quote Lord Bowen: "The state of a man's mind is as much a matter of fact as the state of his digestion." Recurring to monosyllabic answers and House of Lords decisions, we may cite question and answer 923, "Are one-man companies legal? Yes." The book is interesting and informing, but Mr. Ashton does not profess to have followed any scheme of arrangement. For reference to particular points he leaves the reader to rely on the index.

Books of the Week.

Licensing.—Paterson's Licensing Acts. By the late JAMES PATERSON, M.A., Barrister-at-Law. Being the Licensing (Consolidation) Act, 1910, The Finance (1909-10) Act, 1910, The Licensing Act, 1921, and the Extant Provisions of the Licensing Acts from 1830 to 1902. Together with the Relevant Emergency Legislation of 1914-18, etc., etc., with Forms. Thirty-fourth edition. By HARRY BAIRD HEMMING, LL.B., Barrister-at-Law, and S. E. MAJOR, Junr., Solicitor. Butterworth & Co. 22s. 6d. net.; thin edition 3s. 6d. extra.

Criminal Law.—Criminal Appeal Cases. Edited by HERMAN COHEN, Barrister-at-Law. 12th, 19th, 26th November, 3rd, 10th, 17th, 20th, 21st December, 1923; together with Indexes to Vol. 17. Sweet & Maxwell, Ltd. 12s. 6d. net; prepaid subscription to Vol. 17, £2 net.

Law Quarterly Review.—Edited by A. E. RANDALL, Barrister-at-Law. January, 1924. Stevens & Sons, Ltd. 6s. net.

Correspondence.

Solicitors and Counsel.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Members of the Law Society in the provinces will have an opportunity directly to vote on a question of vital interest to our profession, and I venture to hope they will use their votes—for or against—in order that the decision may be representative of the Society as a whole and not merely of the London meeting.

My proposal is not for fusion. Personally I am not in favour of fusion. I may possibly seem old-fashioned, but I am not in love with American institutions, and would prefer to retain the Bar as part of our legal system. However, this is no reason why solicitors should not be accorded audience in all courts co-equal with counsel. The Bar would remain as it is to-day, except that its members would become specialists. They would still be needed as consultants, as draftsmen, and as advocates in cases of consequence, and their prestige would enormously gain, because only men good at their job would get the work.

It is suggested against my proposal that barristers would rise up in their fury and demand all sorts of encroachments on the privileges of solicitors. Well, these are not many. Almost every position of value in the law is already the perquisite of the Bar, and barristers who are envious of us can easily become solicitors if they wish to. There does not seem to have been any great convulsion in the law when solicitors were first admitted to audience in the county courts and in bankruptcy. On the contrary the county court system works without injury to the Bar, and I am convinced that even if solicitors were permitted audience in the High Court as in the county court, the Bar as a profession would be rendered very much more attractive than it has been in the past, because of the new stimulus to conserve its prestige and power.

It will be noted that my proposal is not made in the interest of either solicitors or of the Bar, but in the interest of the public. Nevertheless I have long been of opinion that the speeding up and cheapening of litigation would be to the interest of the profession as well. It is a cruel penalty—the penalty of costs—to be visited on anyone plucky enough to fight a cause he believes in, particularly when encouraged so to do by his legal advisers. Of late years costs have been more than doubled, and even in the

county courts, which were supposed to secure justice for all with a fixed scale, the tendency of late has been towards an increase of many of the items, with the result that an ordinary possession or compensation case (adjourned possibly once or twice for want of time) can be worked up by means of counsel's fees, refreshers and witness fees to £50 and even more on either side.

Practitioners in the country feel the burden most, because their clients in many cases are either desperately poor or desperately stingy owing to the cheeseparing way in which they have made their money. Many a just cause would go to the assizes or to appeal if it were not for the prohibitive cost. If only the solicitor could argue the case, this would give the client confidence to proceed. Instead of which counsel has to be briefed, and, whether he does his work well or ill, there is always the nervous anxiety of his having to send a substitute, or of vital points being missed or slurred. The penalty in many cases is worse for the solicitor than for the client. How often have we said to ourselves, if only we could have had the argument of the case in our own hands it might have brought us hundreds of pounds in costs. This, therefore, is my proposal, and I appeal to the London members who never go near a police court or a county court to stand up for their professional clients in the small provincial towns with whom advocacy is their livelihood. The Bar would still get plenty of work, and clients would be free to choose who they would have to do the argument for them. It is ridiculous that when counsel fails to turn up, the solicitor can only be permitted to whisper excuses and put up the client to conduct the case himself. Country practitioners may possibly be able to initiate the new procedure by inducing magistrates in Quarter Sessions to pass resolutions admitting solicitors to audience.

I look forward myself to the time when all causes will be decided in county courts and at Petty Sessions, with the High Court as a court only of appeal, but when I once ventured to make this suggestion to a Royal Commission the chairman gave such an obvious gasp that I realised my proposal was a quarter of a century before its time.

JAMES J. DODD.

11, New-square,
Lincoln's Inn, W.C.2.
29th January.

Transfer of Shares by an Executor to Himself.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Referring to the discussion which has recently taken place in your Journal on this subject, it may interest you to know that we have recently had a case where a well-known limited company in the City required our client, an executrix, to sign a memo. in the following form, viz. :—

> I the undersigned being the Executrix of the Will of deceased of which Probate was duly granted to me on the by the Probate Registry hereby request you to register me as a Member of the Company and as absolute owner in respect of the Preferred Stock in your Company now standing in the name of the said deceased in the Register of Members of your Company.

HOWE & RAKE.

22, Chancery Lane, W.C.
29th January.

The Law of Property Act, 1922: Equitable Interests and Mortgages.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Can you inform your readers of what the effect of s. 3 (6) of the Law of Property Act, 1922, is likely to be? This sub-section says that "where any equitable interest, . . . to which the section applies, has priority to any legal estate which is paramount to the trust for sale or settlement, nothing contained in the section shall enable such interest . . . to be overreached to the prejudice of the person in whom the same is vested without his consent." Jointures in future will always be equitable interests, and when the portions term in a settlement has been mortgaged to secure portions actually raised, and the mortgagee has called upon the estate owner to secure the mortgage by the grant of a legal term, we shall have apparently a state of things to which the sub-section applies. My point is that, as the jointure occurs only in the "trust deed" and not in the "vesting deed," it will be necessary to put the former on the abstract of title, whereas it seems clear that only the "vesting deed" is intended to be abstracted.

SECOND MORTGAGES.

What precisely will be the position of a purchaser of land subject to a mortgage, when there is also a second mortgage of which he has no notice? At the present time the second mortgage is an equitable one, and if the purchaser has no notice of it, he can protect himself by getting in the legal estate. After the Act comes into operation, second and subsequent mortgages will in most cases be *legal* terms. Will the purchaser be able to protect himself by keeping alive the first mortgage, when he pays it off? I suggest that many of your readers would be grateful if you could see your way to giving them another series of the instructive and interesting papers on the Act which you gave them about a year ago. In those articles the new method of effecting settlements of land and the vesting of the legal estate on the enfranchisement of copyholds were only just touched upon.

REAL PROPERTY STUDENT.

[We are obliged for our correspondent's letter. We deal with it under "Current Topics." As soon as the Consolidating Bills are available, we hope to take up again the consideration of the new system.—Ed., *S.J.*]

Rent Restriction Acts—Calling in of Mortgages—Mortgagee in Possession.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—I recently acted for a purchaser on a purchase from mortgagees in possession, and I asked for an assurance that the mortgagees were in possession on the 25th March, 1920: Act of 1920, s. 7, prov. (i).

The vendors, who are themselves solicitors, gave me the assurance required, but contended that my requirement was unnecessary, having regard to s. 2 (1) of the Act of 1923.

Is this contention well founded? I cannot think it is. The last-mentioned section begins "When the landlord," and the word "landlord" seems very inappropriate to describe a mortgagee as such.

Moreover, the following clauses of the section indicate that it was tenancies, and not mortgages, that the draughtsman had in his mind.

W. H. W.

London, W.C.2.
29th January.

[Section 2 (1) of the 1923 Act requires that there shall be a "landlord" in possession at the passing of the Act, or coming into possession afterwards, and possession means actual possession. "Landlord" connotes "tenant," and the provision implies that there has been a tenancy under the landlord, and that this has come to an end and the landlord has regained actual possession. Section 7, prov. (i), of the 1920 Act contemplates a position of affairs which might be the same—where the mortgagee has let the house and then resumed actual possession—but will usually be different. The possession under prov. (i) is not necessarily actual possession, but also receipt of rent, and we agree with our correspondent that a mortgagee exercising his power of sale in reliance on possession on 25th March, 1920, should establish to the satisfaction of the purchaser that he was then mortgagee in possession.—Ed., *S.J.*]

Custody of Title Deeds to Leaseholds.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—I shall be obliged for an opinion as to whether a tenant for life of *leaseholds* may require the trustees of the settlement to hand him the title deeds.

Mr. Justice Swinfen-Eady in *Wheeler* v. *Tootell*, W.R. 693, 23rd July, 1903, says :—

> "A tenant for life of personalty is not entitled to come and ask for the title deeds of the property."

It is not clear whether leaseholds would be regarded as realty or personalty for this purpose.

TRUSTEE.

21st January.

[For this purpose leaseholds rank as real estate. The tenant for life has the custody of the title deeds because he has the control of the estate. Since the Settled Land Act, 1882, this control has been vested on his statutory powers: *Re Wythes*, 1893, 2 Ch. 369; *Re Money Kyrle*, 1900, 2 Ch. 839; and this reason applies to leaseholds as well as freeholds. But even before that Act, a tenant for life was put in possession of the title deeds of leaseholds on proper terms as to their security: *Lady Langdale* v. *Briggs*, 8 D.M. & G. 391, 416, 419.—Ed. *S.J.*]

CASES OF THE WEEK.

Privy Council.

WELDEN *v.* **SMITH (representing THE SOUTH AUSTRALIAN GOVERNMENT).** 22nd January.

COLONY—PUBLIC AUTHORITY—EXERCISE OF STATUTORY POWERS—OBLIGATION TO TAKE REASONABLE CARE—NEGLIGENCE—AGENTS.

The Government of South Australia may be made liable for loss occasioned by the negligence or want of reasonable care of their servants and agents in the execution of the duties of the Government under the Wheat Harvest Acts, 1915-17 of South Australia.

By the Wheat Harvest Acts, 1915-17 of South Australia, any owner of wheat might deliver his wheat to the Government for sale on his behalf, and the net proceeds of all wheat so sold were to be divided among the owners in proportion to the amount of wheat delivered by them; but in order that an owner delivering wheat of fair average quality should not suffer by having his wheat pooled with inferior wheat, a deduction was to be made in respect of any inferior wheat. The result was that, subject to this provision for the protection of contributors of good wheat, such owner received for his wheat a price contingent on the aggregate price obtained for the whole. The Acts empowered the Minister of Agriculture to appoint companies, firms or individuals to act as agents for the Government in receiving, storing, protecting and delivering the wheat. The appellant, an owner of wheat, delivered to the Government of South Australia his harvest, and received on account of the price payable to him a sum of 2s. 6d. a bushel, but the balance had not yet been settled. On 29th April, 1921, the appellant, under Ordinance No. 6 of 1853, presented to the Governor of South Australia a petition, in which he alleged that by reason of the negligence and carelessness of the Government, and its agents, large quantities of the wheat delivered to it were damaged and destroyed, and the appellant, on behalf of himself and all other persons who had delivered wheat to the Government, claimed a declaration that he and such other persons were entitled to compensation for such negligence and loss. The respondent was appointed a nominal defendant to the proceedings, and delivered a defence which raised two points of law, viz.: (1) that there was no jurisdiction, (2) that there was no cause of action. On the hearing of the points of law by the Supreme Court of South Australia, that Court upheld the first objection of the nominal defendant on the ground that a petition on behalf of a plaintiff and other persons was not contemplated by Ordinance No. 6; but the Court held that this objection was not fatal to the petitioner's case, and that the petition was good so far as it prayed for relief on behalf of the petitioner himself. On this point therefore the decision of the Supreme Court of South Australia stood. On the second point raised by the nominal defendant the Supreme Court decided against him, but on appeal to the High Court of Australia, that Court reversed the decision of the Supreme Court, mainly on the ground that if the Act gave to each owner of wheat the right to insist that his own wheat should be carefully kept until it was sold, no similar right with regard to all other wheat was expressed or implied in the Act. The High Court declared that the petition disclosed no cause of action, and it was against this decision that the present appeal was brought.

The JUDICIAL COMMITTEE reversed the judgment of the High Court of Australia. The LORD CHANCELLOR, delivering their lordships' judgment, and after stating the facts, said the question was whether the Government of South Australia, in the performance of its duties under the Act, was free from any obligation to take ordinary and reasonable care. In their lordships' opinion it was not. It was an implied condition, said Lord Watson, in *Sanitary Commissioners of Gibraltar* v. *Orfila*, 15 App. Cas. 411, of statutory powers that when exercised they should be executed with due care; and the same doctrine applied generally to cases where a public authority undertook to deal with the property of the subject (see *Brabant* v. *King*, 1895, A.C. 632). The cases in which it had been held that statutory duties would not readily be extended by implication, such as *Sharpness New Docks Co.* v. *Attorney-General*, 1915, A.C. 654, had no application to a case where the duty plainly existed, and the only question was as to its careful exercise. It was not disputed that, having regard to the decision in *Farnell* v. *Bowman*, 12 App. Cas. 643, a claim founded on tort, as well as a claim for breach of contract, could properly be brought against the Government under Ordinance No. 6 of 1853. As to the suggestion that the responsibility, if any, for careful storage was upon the agents of the Government, and not upon the Government itself, their lordships were unable to accept it. The Government had power to appoint agents, but its powers were not confined as in *Fowles* v. *Eastern and Australian Steamship Co.*, 1916, 2 A.C. 556, to the selection of such agents. The agents, when appointed, acted on behalf of the Government, and there was no reason why the Government should not, according to the ordinary rule, be liable for their default. For those reasons their lordships were unable to agree with the view taken by the High Court of Australia, that—on the assumption which for the present purpose must be made, that the Government of South Australia, its servants or agents had been guilty of negligence or want of reasonable care in the handling and selling of the owner's wheat—the owners were wholly without a remedy. They were of opinion that in point of law the Government might be made liable for negligence and want of reasonable and proper care, if proved, and they would humbly advise his Majesty that the order of the High Court of Australia be reversed, and the order of the Supreme Court be restored with costs here and below.—COUNSEL: *Maugham*, K.C., and *Stamp*; *Barrington-Ward*, K.C., *Erskine Cleland*, K.C. (of the Australian Bar) and *Charles Doughty*. SOLICITORS: *Blyth, Dutton, Hartley & Blyth*; *Sutton, Ommanney & Oliver*.

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

Court of Appeal.

THOMAS *v.* **THOMAS.** No. 1. 19th December and 18th January.

HUSBAND AND WIFE—DESERTION—HUSBAND ORDERS WIFE TO LEAVE HOME—REQUEST TO RETURN—WIFE'S REFUSAL—REFUSAL TO RETURN JUSTIFIED BY HUSBAND'S CONDUCT—DESERTION CONTINUING—SUMMARY JURISDICTION (MARRIED WOMEN) ACT, 1893.

A husband who was proved guilty of acts of cruelty towards his wife finally ordered her to leave his house and take two of her children with her. She did so and returned to her parents' home. Immediately afterwards he begged her to return, but she refused to do so, and then took out a summons before the justices for separation and maintenance. The justices found that the husband had deserted his wife, and made an order that she was no longer bound to cohabit with him, and that he should pay her a weekly sum for maintenance, and gave the wife the custody of the children.

Held, that the desertion was a continuing offence which had not been put an end to by the husband's offers to take his wife back, and that the wife in the circumstances was justified in refusing to accept such offers.

Decision of the Divisional Court of the Divorce Division (Sir H. Duke, P., and Hill, J.) *affirmed.*

Russell *v.* Russell, 1895, P. 315, *applied.*

Appeal from a decision of the Divisional Court of the Probate, Divorce and Admiralty Division (Sir H. Duke, P., and Hill, J.), reported 30 T.L.R. 520, dismissing an appeal by a husband from an order of the justices at Brynmawr, South Wales, granting a separation order and maintenance. The appellant, Henry Thomas, was married to the respondent, Mary Ethel Thomas, in June, 1914. He served in the war and on his return bought a confectioner's business at Greenwich, where they lived together. According to the evidence he frequently ill-treated his wife. On 16th June, 1922, he quarrelled with her, and, in language of great coarseness, ordered her to leave the home. Her parents had warned him that if she went she would not return, but he repeated the order, and told her that she might take two of the children with her. Next day he repented, and begged her to return, but she refused. The question was whether the husband had deserted the wife. The Divisional Court held that the justices were right in finding that the desertion had been proved, and had not been put an end to by the request to return, and upheld their order that the wife should no longer be bound to cohabit with the husband, and that she should have the custody of the three children of the marriage, and maintenance at the rate of £2 a week, with costs. The husband appealed.

THE COURT dismissed the appeal. *Cur. adv. vult.*

POLLOCK, M.R., said that it had been argued that desertion was a continuing offence, and that as the husband, by subsequent acts, had endeavoured to get his wife to return to him, there could no longer be desertion. The justices, however, had found the desertion proved, after estimating the conduct of the appellant on the question of desertion by reference to his cruelty and general conduct up to the time when he sent his wife away from him. Since then he had attempted to get his wife to return to him by trying to see her and writing letters to her, and these were relied upon as acts of penitence determining any intention to desert his wife. In his judgment, and for the reasons given by the President of the Divorce Division, the justices were right in considering the husband's conduct as a whole, and in deciding that the wife's refusal to return to cohabitation was not without just cause. The husband had acted with deliberation and determination to part from his wife. His previous conduct might be

looked at to see whether his action 16th June ought to be regarded merely as an angry impulse. He had from time to time been guilty of gross cruelty to his wife, but three months before he had told her to go, and by repeated acts of cruelty he had shown that he valued his wife's presence but little. It was contended for him that his so-called repentance must be accepted as the outstanding feature of his conduct during some eight or nine months, even though he might not be entitled to an order for restitution of conjugal rights, in accordance with the principles laid down in *Russell* v. *Russell*, 1895, P., 315, as interpreted in *Oldroyd* v. *Oldroyd*, 1896, P., at p. 184. But why should that be so? It was a question for those who had to decide, upon the evidence before them, what weight and emphasis should be placed upon his cruelty, indifference, determination to get rid of his wife, and his sorrow when he realized the need of her. The justices had decided on all the facts before them and had estimated the effect of his action on 16th June by reference to his conduct generally, and had found that his intention was to break off matrimonial relations with his wife. His subsequent efforts to get her back and promises of amendment must be tried by the same test. Desertion could be put an end to by cohabitation, but it was a different proposition to say that a husband could obliterate his previous conduct by subsequent offers, the genuineness of which the wife might doubt with reason. Desertion was not a single act complete in itself, and revocable by a single act of repentance. The act of departure from the other spouse drew its significance from the purpose with which it was done, as revealed by conduct or other expressions of intention (*Charter* v. *Charter*, 84 L.T., 272). A mere temporary parting was equivocal unless and until its purpose and object was made plain. He agreed with the observations of Day, J., in *Wilkinson* v. *Wilkinson*, 58 J.P., at p. 416, that desertion was not a specific act, but a course of conduct. As Gorell Barnes, J., said in *Sickert* v. *Sickert*, 1899, P., at p. 282: "The party who intends bringing the cohabitation to an end and whose conduct in reality causes its termination commits the act of desertion." That conduct was not necessarily wiped out by a letter of invitation to the wife to return. It was for those who heard the whole evidence to decide whether the conduct amounting to desertion was no longer to be regarded, so that there was no excuse for the refusal of the other spouse to return. The justices had rightly heard the evidence, and had come to a proper conclusion, and the appeal must be dismissed. WARRINGTON, L.J. and SARGANT, L.J. delivered judgment to the same effect.—COUNSEL: *Montgomery*, K.C., and *B. A. Leverson*; *Bayford*, K.C., and *Clifford Mortimer*. SOLICITORS: *Douglas Wiseman & Co.*; *Bridges, Sawtell & Co.* for *Gibson, Harris & Hiley*, Brynmawr.

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

SCHILLER *v.* PETERSEN & CO. LIMITED.

No. 1. 18th and 21st January.

MORTGAGOR AND MORTGAGEE—MORTGAGOR TO FORM COMPANY "WITHIN SIX MONTHS OF THE DECLARATION OF PEACE"—WHETHER CALENDAR OR LUNAR MONTHS.

Although by the common law the word "month" means a lunar month, or period of twenty-eight days, it is open to the court to look at the intention of the parties to a contract to see whether a lunar or calendar month was intended. Further, in mortgage transactions there is a general rule that "month" means calendar and not lunar month.

Decision of Eve, J., 68 SOL. J. 252, *reversed*.

By a mortgage deed dated 9th March, 1917, it was stated that in consideration of £5,000 paid by the plaintiff as mortgagee to the defendants as mortgagor, the latter covenanted to pay the same, and to pay interest at 6 per cent. until repayment, by equal half-yearly payments, on 9th March and 9th September in each year. The mortgagor by the same deed conveyed certain mining lands at Altarnum in Cornwall to the mortgagee, with a proviso for redemption. There was also a proviso that the mortgagee would not call in the mortgage if the mortgage interest were paid on the appointed days or within "twenty-eight days" after each of such days, and the further important proviso that "Provided also that in case a company shall be formed with limited liability within six months of the declaration of peace, and which company shall acquire the said premises"—then the mortgagee would accept £5,000 in first and only debentures of that company in full satisfaction of the mortgage debt, and would thereupon reconvey the premises to the mortgagor. The declaration of the Treaty of Peace was on 31st August, 1921, and the projected company was formed and registered by the defendants on 20th February, 1922, under the name of Altarnum Mines Limited. The plaintiff refused to recognise the new company, to accept its debentures, or to re-convey the land, and he brought this action claiming £5,000 and interest under the mortgage, and, in default, foreclosure. His contentions were (1) that an effective company had not been formed, and (2) that the registration of Altarnum Mines Limited should have been within six lunar months of the declaration of peace, and that as the registration was not until five days after that period, the proviso had not been complied with. The defendants contended that "within six months" meant within six calendar months, *i.e.*, before 28th February, 1922. Eve, J., held the formation of the company was a compliance in form, but not in substance, with the proviso. Upon the second point, he held that there was nothing in the mortgage deed which prevented the words "six months" having their primary legal meaning of lunar months. He therefore gave judgment for the plaintiff. The defendants appealed. The court allowed the appeal.

Sir ERNEST POLLOCK, M.R., said that the principal question was to determine whether in that particular deed "month" meant a period of twenty-eight days or a calendar month. The court had looked into cases which went so far back as 1745, and in *Dyke* v. *Sweeting*, Willes, 585, it was said that the court thought that "months" were meant to be calendar months, and that showed that it was possible to look at the indenture itself to see whether calendar or lunar months were intended; in spite of the common law rule that "month" meant lunar month, except in regard to mercantile transactions in the City of London. There were two cases decided in 1769 of mortgages, and the opinion was expressed by Lord Hardwicke that the imputation there was calendar month and not lunar month. But with regard to mortgages, as long ago as the fourth edition of Davidson's Precedents in Conveyancing, Vol. II, part 2, p. 309, there appeared a note in which it was said that "month" though in law *primâ facie* a lunar month, yet in mortgage transactions generally meant a calendar month. That was in the edition of 1881, but the statement seemed to be taken from earlier editions, and the cases set out as bearing on the note appeared to justify the statement. In *Hutton* v. *Brown*, 29 W.R. 928; 45 L.T. 343, Fry, J., had the doctrine put before him in very clear terms, and it was said that in mortgage transactions "month" meant calendar month, and there was cited the note in Davidson's Precedents, and Fry, J., said: "It is said that in mortgage transactions months are always calendar months, and this is a mortgage transaction." He found that the transaction there was not a mortgage transaction, but it appeared that he differentiated the meaning in a mortgage transaction from the ordinary common law meaning, without dissenting from the rule. In 1904 Farwell, J., decided the case of *Bruner* v. *Moore*, 52 W.R. 295; 1904, 1 Ch. 305, and *Hutton* v. *Brown*, *supra*, was cited before him, and he said that words must have their ordinary primary meaning unless the context or surrounding circumstances showed that a secondary meaning was intended; but he did not make any particular reference to mortgages, and it seemed, therefore, that he was not inclined to dissociate himself from the rule. He did, however, set out a list of cases in which "month" had been held to mean calendar month, such as *Lang* v. *Gale*, 1 M. & S. 111, *Reg* v. *Inhabitants of Chawton*, 1 Q.B. 247, and others, cases where the context showed what the parties intended. Having regard to these authorities, it seemed to him (the Master of the Rolls) that there was a rule whereby in mortgage transactions "month" was to be looked upon as a calendar month, and he thought that Fry, J., and other judges and other authorities had recognised that rule. He (the Master of the Rolls) could not read this transaction as anything else but a mortgage transaction, but, whether it were so or not, there seemed in any case enough in the document to show that calendar months were intended by the parties. Where a period of twenty-eight days was referred to in the document it was in fact not set out as "a month" but as twenty-eight days, showing the general intention to use "month" as implying calendar month. Eve, J., had therefore come to a wrong conclusion when he held that the company was formed outside the time limit. As regards the sufficiency of the company formed, it seemed impossible to say that the terms of the proviso had not been carried out. The appeal must therefore be allowed with costs, and an order made that the plaintiff must accept the debentures of the company offered to him.

WARRINGTON and SARGANT, L.JJ., delivered judgments to the same effect.—COUNSEL: *Clayton*, K.C., and *Cecil Turner*; *Gover*, K.C., and *A. L. Ellis*. SOLICITORS: *May, May & Deacon*, for *Coward, Grylls & Coward*, Launceston; *Maxwell & Co.*

[Reported by G. T. WHITFIELD-HAYES, Barrister-at-Law.]

The London Probation Committee (of which Mr. S. W. Harris, Assistant Secretary, Home Office, is chairman) gave a reception last Saturday in the library of the Home Office to the probation officers attached to the Metropolitan Police Courts, and invited the London magistrates and others to meet them. There were present the Home Secretary, accompanied by Mrs. Henderson, the ex-Home Secretary, Mr. Bridgeman, Sir John Anderson, Permanent Under-Secretary of the Home Office, Sir Chartres Biron, the Chief Magistrate, and several London magistrates. Mr. Bridgeman assured the probation officers that they could rely on his successor at the Home Office for sympathy and support in their work, and the Home Secretary expressed his interest in probation and his desire that still further use should be made of this hopeful method of dealing with delinquents.

CASES OF LAST SITTINGS.

Court of Appeal.

REDHEUGH COLLIERY LIMITED *v.* GATESHEAD UNION ASSESSMENT COMMITTEE. 22nd November.

RATES—APPEAL TO QUARTER SESSIONS—NOTICE—RESPITE—FURTHER RESPITE—POINT RAISED NOT SPECIFIED IN NOTICE OF OBJECTION TO ASSESSMENT COMMITTEE—POOR RELIEF ACT, 1743, 17 Geo. II, c. 38, s. 4—UNION ASSESSMENT COMMITTEE ACT, 1862, 25 & 26 Vict., c. 103, s. 18—UNION ASSESSMENT COMMITTEE AMENDMENT ACT, 1864, 27 & 28 Vict., c. 39, s. 1.

A colliery company gave notice of objection to the valuation list in force in the parish, and appealed against a poor rate on the ground that the valuation of the colliery was unfair, incorrect or excessive and illegal. In a schedule to the notice they filled in the value of the colliery under the heading "present rateable value," but made no entry in the column headed "present gross estimated rental in rate book." No objection was made to the assessment committee that the statutable deductions from the gross were insufficient, but there was nothing to show that the objectors had definitely limited their case so as to exclude this contention. The assessment committee upheld the assessment and the colliery owners appealed to Quarter Sessions. The notice given before the Midsummer Sessions was less than the requisite twenty-one days' notice. The appeal was entered and respited to the Michaelmas Sessions, and was then further respited to the Epiphany Sessions. No new twenty-one days' notice was given either for the Michaelmas or the Epiphany Sessions.

Held, that the notice which was in fact given, and which was not a twenty-one days' notice for the Midsummer Quarter Sessions, was a good notice for the Michaelmas Quarter Sessions, and it was not open to the assessment committee to say that a twenty-one days' notice was not given, and, notwithstanding the provisions of s. 4 of the Poor Relief Act, 1743, no valid objection could be taken to Quarter Sessions respiting the appeal from the Michaelmas Sessions to the Epiphany Sessions. The notice already given remained a good notice notwithstanding the further respiting of the appeal.

The colliery company, at the hearing before Quarter Sessions, put forward an objection with regard to the sufficiency of the statutable deductions made from the gross estimated rental, in order to arrive at the rateable value. The court of Quarter Sessions entertained the objection, and as a result, reduced the rateable value of the colliery to £1. The Divisional Court held (by a majority) that the colliery company were not entitled to raise before the Quarter Sessions the point whether in the rate appealed against, sufficient deduction was made from the gross rental to arrive at the rateable value, as that point was not sufficiently taken before the assessment committee.

Held, that the appellants having served a general notice of objection, which complied with the requirements of s. 18 of the Union Assessment Committee Act of 1862, the onus lay on the assessment committee to prove that the appellants had had the fullest opportunity of stating all the points they desired and had stated them, and that the particular point in question was not included. As in this case the assessment committee had refused the appellants a general application for a further hearing, the assessment committee could not say that under the general notice of objection which was given, it was not open to the appellants to take the point at Quarter Sessions. Decision of the Divisional Court, ante 222; 39 T.L.R. 661, *reversed.*

Appeal from the Divisional Court, 68 SOL. J. 222; 39 T.L.R 661. The facts sufficiently appear from the head note and from the report, *ante*, p. 222 of the case in the Divisional Court, where the special case is set out.

BANKES, L.J.: The questions arise under the statutes relating to rating. The statute of 1864, the Union Assessment Committee Amendment Act, s. 1, is the section which now regulates the right of appeal to Quarter Sessions from the assessment committee, and the material parts of that section are as follows: "No person shall be empowered to appeal to any sessions against a poor rate made in conformity with the valuation list approved of by such committee, unless he shall have given to such committee notice of objection against the said list, and shall have failed to obtain such relief in the matter as he deems just; and which objection, after notice given at any time in the manner prescribed by the said Act with respect to objections, the committee shall hear, with full power to call for and amend such list, although the same has been approved of," and so forth. In order to see what notice of objection this section requires to be given, one has to turn back to s. 18 of the Union Assessment Committee Act of 1862, and that provides that "any person who may feel himself aggrieved by any valuation list on the ground of unfairness or incorrectness in the valuation of any hereditaments included therein, or on the ground of the omission of any rateable hereditament from such list, may at any time after the deposit as aforesaid of such list, and before the expiration of twenty-eight days after the notice of the deposit as aforesaid, give to the committee and to the overseers a notice in writing of his objection, specifying the grounds thereof." The conditions precedent laid down there, therefore, are that the appellant to Quarter Sessions must have given the committee notice of his objection and shall have failed to obtain relief in such manner as he deems just, he must give a twenty-one days' notice, his case must be one in which he complains of the unfairness or incorrectness in the valuation, and the notice of his objection must specify the grounds. It is quite plain that the statute itself indicates what the general grounds are, and the general grounds are "unfairness or incorrectness in the valuation of any hereditaments," and all the statute requires is that he should specify the grounds of his objection. In my opinion, the person who gives a notice specifying as the ground of his objection that he complains of the "unfairness or incorrectness in the valuation of any hereditaments included therein" gives a notice which complies with the statutory requirements of the section Let me just deal with the matter from two aspects. Assume that an objector has given a notice of objection, stating merely that he generally complains that he feels aggrieved with the statement in the valuation list, in reference to the valuation of the hereditament on the ground of unfairness or incorrectness. Assuming that he has given a general notice in that form, it appears to me that he may either attend before the assessment committee to argue or support his case, or he may refrain from attending, and with all submission to the argument which has been addressed to us, as far as I know there is no obligation upon a person who has given a notice of objection to attend before the assessment committee, and assuming there is no attendance, the assessment committee are bound to deal with the notice of objection, although the person making it does not himself personally attend. Take the case where, in the case of non-attendance, the assessment committee decide against the objection; so far as I can see there is no reason why the objector should not then appeal to Quarter Sessions and be entitled to urge at Quarter Sessions any ground of objection which was properly covered by the general notice given in the way I have indicated.

Now I will take the case of a person who does attend before the assessment committee in support of his general objection. It seems to me quite possible that a person who does attend may either expressly or impliedly by his conduct limit his general objection to some particular objection and urge that particular objection, and indicate either expressly or impliedly at the same time that that is his only objection. I think if that course is followed it would be open to the assessment committee at the Quarter Sessions to say: "Although you, as appellant, gave a general notice in the first instance, you did subsequently, when you appeared before the assessment committee, limit your objection to one particular point"—or it may be several particular points—"and you cannot at Quarter Sessions travel beyond those points or urge a case which you did not include under your heads of objection when you appeared before the assessment committee." I think it is quite clearly established that an appellant at Quarter Sessions from a rate cannot raise at Quarter Sessions matters which were not raised before the assessment committee. The case that has been referred to, and was dealt with by Greer, J., in his judgment, *Williams* v. *Bedminster Union*, 20 L.T. 710, I think makes that point reasonably clear.

In this particular case the question is not quite satisfactorily disposed of in my opinion as to what really did occur before the assessment committee, because this is a case in which the objectors did appear before the assessment committee, and having regard to what I have already said, I think that if the objectors had before the assessment committee definitely limited their case to one or more particular points, they ought not at the Quarter Sessions to be allowed to travel beyond them. But what we know, and all we know, as to what happened appears in the special case, and this is what is stated: "The rate in question was made on the 13th April, 1921, and the supplemental rate on the 16th June, 1921, for the period ending the 31st March, 1922. The appellants on the 29th September, 1921, gave notice of objection to the valuation list in force in the said parish, a copy of the said notice marked 'A' is annexed hereto and forms part of this case. On the 1st November, 1921, the objection was heard by the assessment committee and was adjourned pending correspondence with the appellants and inquiries by the committee's valuer. After several intermediate adjournments, although the appellants requested and were refused a further hearing before the committee, the committee on the 19th April, 1922, informed the appellants that they had decided to sustain the assessment at the sums above stated. No express objection was made to the said list, either in the said notice or at the said hearing, on the ground that the deductions made from the gross estimated rental in order to arrive at the rateable value of the said colliery were insufficient." That leaves the matter in very considerable doubt as to what actually occurred, but we are told,

and I have no reason to doubt it, that what really occurred was that the objection had reference, not to what I call the ordinary question as to whether the statutory deductions had been sufficiently or properly allowed, but had reference to this particular colliery being dealt with on a conventional system apparently which had been adopted in the district for the purpose of rating collieries. No doubt that was so, and if that point had succeeded or had influenced the assessment committee, it may be that if the fullest opportunity had been given to the objector to state his case he might not have raised any further question; but on the other hand it is quite plain that those who were advising him were aware of an objection which, if taken, must in my opinion have been conclusive, and that was, that having regard to the gross which was inserted in the valuation list, if the proper statutory deductions were made, the rateable value must be reduced to practically nothing, because within a very short time after this refusal to grant a further hearing notice of appeal to Quarter Sessions was lodged, in which this very point appears in the forefront of the notice of appeal. In my opinion, if an assessment committee desires at Quarter Sessions to establish that any particular point is not open to the appellant at Quarter Sessions, because it was not taken before the assessment committee either in the formal notice first given or in argument subsequently, it lies upon the assessment committee to prove that the applicant, or the objector, had the fullest opportunity of stating all the points he desired to state, and that he had stated them, and this particular point was not included. Here, in my opinion, this assessment committee are not in that position because they did refuse this colliery company a further hearing. The further hearing was not applied for for the purpose of further arguing this particular point; it was, apparently, a general application for further hearing; and that was refused, and when once refused it seems to me to shut the door to any possibility of the assessment committee in this particular case being able to say that under the general notice of objection which was given it was not open to this particular appellant to raise this point at the Quarter Sessions.

That deals with the main objection. There was this further objection which, as far as I understand the argument, takes this form; it is said that if the appellants had accepted the gross valuation it might then have been open to them to raise the argument they did, that the statutory deductions had not been made, but that inasmuch as they did not make in their original notice of objection any reference to the gross, that point is not open—at least, so I understand the argument. For myself I fail to see that there is any substance in it, because when the colliery company carried in, or gave their notice of objection, they omitted altogether any reference to the gross, the natural conclusion from which, as I understand such a notice, would be: "We do not object to the gross," and I do not see any difference between saying: "I do not object to the gross," and "For this purpose I accept the gross." I myself fail to see that there is any substance in the point that it is not open to these appellants to rely upon a case which is founded upon the gross as inserted by the assessment committee themselves in the valuation list and not objected to by the colliery company, and then to say: "From that gross I admit the statutory deductions should be made, in which case it is obvious that the amount inserted as the rateable value is excessive."

Another question which is asked in the special case is whether the Court were right in thinking that they were bound by the decision of *The Hendon Paper Company* and *The Sunderland Union Assessment Committee*, 1915, 1 K.B. 763. In my opinion, they clearly were. It has been too long established that where an appeal is made against the amount inserted in a valuation list, as being the rateable value, where it appears that the objection made is a valid objection, the assessment committee cannot save themselves by altering the amount of the gross assessment. Whether that really works fairly is a matter which I think deserves serious consideration, but I am sure that if any alteration in that practice is to be made it is not to be made, and cannot be made, by a consideration of the decisions at the present stage of matters. The matter has been too long decided and established, and if any alteration is to be made it must be made by legislation. I think, therefore, on the main points that the view taken by Mr. Justice Greer was the right one, and I would add to the reasons which he gave, a reason which seems to me to be a special one depending upon the particular facts of this case, namely, the fact that in my opinion the assessment committee were not in a position to say to Quarter Sessions: "This particular objection which has not been urged before you was not taken, or was abandoned, or was not included under the general head of objection given."

I have only to refer now to the perliminary points. I do not think I can add anything to what was said in the Court below. In the notice of appeal there is authority for saying that the notice which was in fact given, and which was not a twenty-one days' notice for the Midsummer Quarter Sessions, was a good notice for the Michaelmas Sessions, and it is not open to the assessment committee to say that a twenty-one days' notice was not given. It is quite true that what the parties did was to go to the Midsummer Sessions and ask the Sessions to deal with the matter under the Act of 1743. I do not think that that affects the question as to whether the notice which was in fact given was a good twenty-one days' notice for the Michaelmas Sessions or not. They did go before the Midsummer Sessions, a twenty-one days' notice for the Michaelmas Sessions having, in my opinion, been given. When they got there, whether it was done by arrangement or consent, or whether any objection was made, we do not know, but the Justices did adjourn the appeal to the next Quarter Sessions. Under those circumstances, in my opinion, no valid objection can be taken to the notice. Then it is said, that because the statute says that having adjourned it they shall "adjourn the appeal to the next Quarter Sessions and then and there finally determine the same" means that having adjourned it to the Michaelmas Sessions they must, whatever happens, decide the case finally at those Sessions. Of course, if the statute said it, it has got to be done, but it requires much stronger words than these to deprive the Sessions of their common law to respite an appeal, and the view taken by Mr. Justice Greer on this point is quite right, and the words "then and there" are used in opposition to the language used above in reference to an adjournment. The one Sessions is a Sessions of the adjournment; the other Sessions is a Sessions of decision, but because it is a Sessions of decision it does not cease to have the common law right to respite if it thinks proper.

For these reasons I think that the appeal must be allowed, the questions in the special case must be answered in the affirmative, and the decisions of the Quarter Sessions will stand; and I think the costs here and below must be the appellants'.

SCRUTTON and ATKIN, L.JJ., concurred in allowing the appeal.

—COUNSEL: *Ernest Page*, K.C., *G. F. L. Mortimer*, K.C. and *R. I. Simey*; *E. M. Konstam*, K.C., and *H. S. Mundahl*.

SOLICITORS: *Crossman, Block & Co.*, for *Murray & Richmond*, Newcastle-on-Tyne; *Teesdale & Co.*, for *Lambert & Lambert*, Gateshead.

[Reported by T. W. MORGAN, Barrister-at-Law.]

High Court—Chancery Division.

JACOBS *v.* THE BATAVIA AND GENERAL PLANTATIONS TRUST, LIMITED. P. O. Lawrence, J. 3rd and 18th December.

CONTRACT — COMPANY — PROSPECTUS — DEPOSIT NOTES — CONTRACT IN TWO INSTRUMENTS—COLLATERAL CONTRACT.

A promise inserted in a prospectus as to the issue of deposit notes for the purpose of making them a more attractive investment is not superseded by the issue of the deposit notes which are silent as to such promise. The contract with the purchaser of the notes is compounded of the two documents, the prospectus and the deposit notes, as the prospectus is a binding collateral contract in writing, the consideration for which was the taking up of the notes.

Heilbut Symons & Co. *v.* Buckleton, 1913, A.C. 30, *applied*.

Morgan *v.* Griffiths, 1871, L.R. 6 Ex. 20, *inapplicable*.

Cases where the debenture contains the whole contract distinguishable, e.g., In re Tewkesbury Gas Co., 1911, 2 Ch. 279.

This was an action seeking a declaration as to the obligations of the defendant company with regard to setting aside sums to pay off certain deposit notes at 105 and for other relief. The facts were as follows: The plaintiff, upon the faith of a prospectus issued by the defendant company (hereinafter called the "Trust"), applied for £400 deposit notes, part of an issue of £100,000 then offered for subscription at par, and agreed to accept the notes upon the terms of the prospectus. Four deposit notes were sealed and sent to the plaintiff, each for £100. The prospectus stated that the notes would be paid off at £105 by four annual drawings, and it contained the following paragraph: "Earlier payments. The Trust retains the right to pay off at £105 all or any of the outstanding notes at any time on giving three months' previous notice in writing, but in the event of the sale of the Rio Bravo estates (further referred to in this prospectus) the directors will set aside out of the proceeds of such sale a sum sufficient to redeem all the notes then outstanding and will give the holders the option of being then paid off in cash at £105 or of retaining their notes till the date of drawings." Amongst the investments held by the Trust specified in the same prospectus were the Rio Bravo estates in Guatemala, valued therein at £150,000. It was further stated in the prospectus that, since the report was issued, an option had been granted to an American financial group to purchase those estates from the Trust for £280,000, and that a specimen of the deposit notes, with the conditions attached, could be seen at the offices of the Trust. In each of the deposit notes it was stated that when the principal sum of £100 became payable in accordance with the conditions

endorsed thereon, the Trust would pay the registered holder £105, and that in the meantime interest would be paid on the principal moneys, and that the note was issued subject to and with the benefit of the conditions endorsed thereon, which were to be deemed to be part of the note. One of these conditions repeated the provision in the prospectus for payment off by the drawings, and another repeated the option retained by the Trust to pay off the principal moneys with interest at any time on giving three months' notice; but no mention was made, either in the body of the deposit note or in any of the conditions, of earlier payment in the event of the sale of the Rio Bravo estates. The option of purchase given to the American group had long since lapsed, but in 1923 the Trust contracted to sell the estates and the plaintiff, not having been given the option of being paid off in accordance with the promise contained in the prospectus and being apprehensive that the directors did not intend to set aside a sufficient sum to redeem the outstanding notes, commenced this action, and, in addition to the relief sought by way of declarations, claimed an injunction.

P. O. LAWRENCE, J., in the course of a considered judgment, said: In the first place, upon the true construction of the prospectus, the promise therein contained is not confined to a sale of the Rio Bravo estates to the American group, but is intended to take effect in the event of the sale of those estates to anybody before all the deposit notes have been paid off. On the main question of whether the notes constituted the only subsisting contract between the plaintiff and the Trust, I hold that the promise inserted in the prospectus, with the object of making the issue more attractive to the public, is not superseded by the issue of the deposit notes. The promise is to be construed as if it were inserted in the notes as a proviso to come into operation if and when the Rio Bravo estates were sold. The notes do not contain all the terms of the contract, but the contract is compounded of two documents, namely, the prospectus and the notes, which are to be construed together, or the promise in the prospectus is a binding collateral contract in writing, the consideration for which is the entering into by the plaintiff of the contract to take up the deposit notes, and the transaction satisfies the test laid down by Lord Moulton in *Heilbut Symons & Co.* v. *Buckleton, supra.* Such a collateral contract is outside the rule of law relating to the inadmissibility of parol evidence to add to, vary or contradict the terms of a written instrument, as illustrated in the cases of *Morgan* v. *Griffiths, supra*; *Erskine* v. *Adeane*, 1873, L.R. 8, Ch. 756. *Re Teckesbury Gas Co., supra*, and *British Equitable Assurance Co.* v. *Bailey*, 1906, A.C. 35, are distinguishable on the ground that, in the first case, the question was as to the construction of a debenture which contained the whole contract, and the court refused to refer to the prospectus in pursuance of which the debenture was issued, and that, in the other case, the whole contract was contained in the policy. In the result, the plaintiff succeeds and is entitled to the relief sought.—COUNSEL: *Jenkins*, K.C., and *Cecil Turner*; *Schiller*, K.C., and *Heckscher*. SOLICITORS: *Reid Sharman, White, Bruton & Walker*; *Jenkins, Baker & Co.*

[Reported by L. M. MAY, Barrister-at-Law.]

High Court—King's Bench Division.

KIMM *v.* **COHEN.** Div. Court. 21st November.

EMERGENCY LEGISLATION—LANDLORD AND TENANT—OVERPAYMENT OF RENT BY TENANT—STANDARD RENT—APPORTIONMENT—RECOVERY—INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920, 10 & 11 Geo. 5, c. 17, s. 14.

In March, 1921, *three rooms, forming part of a house, were let to a tenant at* £1 *a week, including the use of the bath room, cellar and garden. In October*, 1922, *the tenant ascertained that the rates had been considerably reduced. Thinking that he ought to obtain some concession with regard to the rent, he enquired what the standard rent of the house was, and refused to pay further rent until his request was granted. In January*, 1923, *the landlord commenced proceedings against him for the recovery of* £11 *in respect of unpaid rent. Ultimately the rent was apportioned at* 11*s.* 7*d. per week, and at the final hearing of the action in the county court the tenant sought judgment on a counter-claim for the difference between* £1 *a week and the apportioned sum of* 11*s.* 7*d. during a period of eighty-six weeks, being the amount which, according to his contention, had been overpaid by him in respect of rent. The county court judge gave judgment in favour of the plaintiff, and the defendant appealed.*

Held, that s. 14 *of the Increase of Rent and Mortgage Interest (Restrictions) Act*, 1920, *applied retrospectively, and that the tenant was entitled to recover in respect of the overpayments of rent.*

Action. Appeal from a decision of a county court judge. The facts are sufficiently stated in the head note. By s. 14 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, it is provided: "(1) Where any sum has, whether before or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which is by virtue of this Act, or any Act repealed by this Act, irrecoverable by the landlord or mortgagee, the sum so paid shall be recoverable from the landlord or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and any such sum, and any other sum which under this Act is recoverable by a tenant from a landlord or payable or repayable by a landlord to a tenant, may, without prejudice to any other method of recovery, be deducted by the tenant or mortgagor from any rent or interest payable by him to the landlord or mortgagee."

SANKEY, J., delivering judgment, said that there appeared to be nothing in the words of s. 14 (the section which governed the point) preventing the Act from applying retrospectively; on the other hand, there appeared to be reasons for its application to be retrospective. If, for example, the business of a county court prevented an application for an apportionment from receiving attention for three months, ought no sum to be recoverable until the apportionment had been made? The defendant was entitled to recover the amount overpaid by him, and the appeal must be allowed.

TALBOT, J., agreed, and the appeal was allowed.—COUNSEL: *J. D. Casswell.* SOLICITOR: *J. H. McDonnell.*

[Reported by J. L. DENISON, Barrister-at-Law.]

REX *v.* **ROBERTS:** *ex parte* **SCURR.**

Div. Court. 31st October, 1st and 21st November.

LOCAL GOVERNMENT—METROPOLITAN BOROUGH—AUDIT OF ACCOUNTS—AUDITOR—POWERS—SURCHARGE—*Certiorari* TO QUASH—METROPOLIS MANAGEMENT ACT, 1855, 18 & 19 Vict., c. 120, s. 62—PUBLIC HEALTH ACT, 1875, 38 & 39 Vict., c. 55, s. 247 (7).

A borough council made payments of wages to their employés under the powers conferred upon them by s. 62 *of the Metropolis Management Act*, 1855. *The district auditor regarded certain payments, so made by them, as being far in excess of those necessary to obtain the services required and to maintain a high standard of efficiency. He, therefore, disallowed a sum of* £5,000, *and surcharged it on certain of the councillors.*

Held, that although the council were empowered by the words of the section to make such payments of this nature as they thought fit, they were in a fiduciary position, not only towards the ratepayers who had elected them, but to the ratepayers as a whole; that it was possible that a payment to a servant entitled to be employed and entitled to be paid by the council, might be of so excessive a character as to become an illegal or ultra vires *payment; that the sum in question was of such a character as to be brought within the words "an item of account contrary to law" within the meaning of s.* 247 (7) *of the Public Health Act*, 1875; *and that the auditor had acted within the powers conferred on him by the latter section in disallowing and surcharging the amount.*

The Mayor, Aldermen, and a number of the Councillors of the Metropolitan Borough of Poplar applied to the court on various grounds for an order quashing a certificate of disallowance and surcharge made by the district auditor of the borough, under which a sum of £5,000 was disallowed and surcharged upon them. These grounds were, *inter alia*: "(1) That the said surcharge was an improper limitation of the discretion vested in the council under s. 62 of the Metropolis Management Act, 1855 . . ." The facts were as follows: In the year 1914 there were no striking variations between the scales of payment made by the several metropolitan borough councils on account of wages of the several grades of their employés. The wages paid them by the Borough of Poplar were not the highest compared with those of other metropolitan councils, but were somewhat above the average—the maximum wage for the lowest grade of labour being 30s. weekly for men and 22s. 6d. weekly for women. By increases from time to time the maximum wage for similar labour had risen by 30th April, 1920, to 64s. and 49s. 9d. respectively. When auditing the accounts for the year ending 31st March, 1921, the auditor found as a fact that a marked increase in the wages scales had taken effect as from 1st May, 1920, and that from that date a maximum rate of 80s. per week for men and women of the lowest grade of workers had been maintained. He did not then raise any objection to such increases by reason of the fact that the cost of living had during and subsequent to the war considerably increased. At the audit beginning upon 26th January, 1921, he found that the above-mentioned rate of 80s. a week was still being maintained, although the cost of living had been materially reduced. He then proceeded to ascertain the rate of wages payable elsewhere in the London area, founding himself upon the agreed rates of the trade union and other awards

appropriate to the several groups of employés. He also prepared charts which were exhibited to the affidavit, filed by him in the case, showing (*a*) the bonus rates paid by the Borough of Poplar since April, 1920; (*b*) the bonus rates corresponding to the extra cost of living as shown by the *Labour Gazette*; (*c*) the bonus rate agreed upon in the awards of the Joint Industrial Council, London District, or of the appropriate trade union. Para. 9 of his affidavit was as follows: "I found (*a*) as a fact that the total of the wage payments by the council in the year 1921-1922 made by the council exceeded by about £17,000 the total amount of wages that would have been paid by them if the agreed wages of the awards referred to in the last paragraph had been adopted, and that the rates of payment were much above those contained in the said awards in the last two months of that year. (*b*) That on a comparison with the weekly wages paid in 1914, increased by a bonus proportionate to the increase in the cost of living, the council's wage payments in 1921-1922 showed an excess of over £25,000. (*c*) That the wages increases paid at the end of the year 1921-1922 were more than sufficient to compensate this increase in the cost of living by fully 100 per cent. in the case of men of grade 'A,' 200 per cent. in the case of women of grade 'A,' 80 per cent. in the case of men of grade 'B,' 85 per cent. in the case of general labourers. (*d*) That as the working hours per week were considerably shorter in 1921 and 1922 than in 1914, the figures given in (*b*) and (*c*) above would be much greater if the comparison were applied to wages per hour instead of wages per week, and that the excess over £25,000 mentioned in (*b*) above would thus be raised to an excess of more than £35,000. (*e*) That in the lower grades the new minimum rate varied from nearly three times to over four times the rates paid per hour in 1914." Being of opinion that, in consequence of this result, it might be his duty under s. 247 (7) of the Public Health Act to disallow some part of the council's wage payments during the year 1921 or 1922 or to make a surcharge in respect of loss to the rate fund unjustifiably incurred, the auditor adjourned his audit and gave to the members of the council concerned notice of that adjournment to afford them an opportunity of attending and making such representations as they thought proper. A number of them attended, and the auditor heard what they had to say. He then came to a determination which is set out in paras. 14, 15, 16 and 17 of his affidavit, as follows: "14. On the facts which were in evidence at the audit, and on the statements made before me by some of the applicants in this case, I took the view that the council in the exercise of their statutory powers had not paid due regard to the interests of the ratepayers whose funds they administered, had imposed unreasonable charges upon those funds, and had made payments which were far in excess of those necessary to obtain the services required and to maintain a high standard of efficiency, and which were thus in reality gifts to their employés in addition to the remuneration for their services, and that the persons responsible had thus incurred an unjustifiable waste of the rate fund and had acted arbitrarily and contrary to law. 15. Although I agreed that in May, 1920, the council exercised their statutory powers with due care in determining the wages to be paid for the time being to each group of manual workers, I have acted on the view that maintaining a minimum of £4 a week for unskilled labour after the reason for the increase of this level had to a large extent disappeared was not a reasonable and legitimate exercise of their statutory power. 16. In particular I formed the opinion that a certain resolution passed by the council on 31st August, 1921, to the effect that no reduction of wage or bonus should be made during the ensuing four months, which was subsequently acted upon for twelve months, was not a legitimate exercise of the council's power. It disregarded important reductions which had already taken place in the cost of living, and in trade union and other awards, and during the period of its operation further important reductions were likely to occur, and did in fact occur. This resolution and its extended application I regarded as *ultra vires* of the council. 17. I disallowed payments on account of wages amounting to the sum of £5,000 in the accounts of the council for the year 1921-22, and for so doing I stated my reasons in my certificate . . ." It was this disallowance and surcharge of £5,000 that the applicants sought to quash. By s. 62 of the Metropolis Local Management Act, 1855, it is provided: "The Metropolitan Board of Works, and (subject to the provisions herein contained) the Board of Works for every district under this Act, and the vestry of every parish mentioned in Schedule (A) to this Act shall respectively appoint or employ, or continue for the purposes of this Act, and may remove at pleasure such clerks, treasurers, and surveyors, and such other officers and servants as may be necessary, and may allow to such clerks, treasurers and surveyors, officers, and servants respectively, such salaries and wages as the Board or vestry may think fit."

SANKEY, J., delivered the considered judgment of the Court. After stating the facts, his lordship said that it should be stated that the surcharge was made upon all the members of the council, but, on the hearing, the case was abandoned against four who had not voted for the increases, and they were dismissed from the case. When the matter came on for argument the learned counsel who appeared on behalf of the auditor expressly disclaimed any charge of negligence or misconduct against any of the persons affected, and based his case upon the first words of s-s. (7) of s. 247 of the Public Health Act, 1875, which provides: "Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on persons making or authorising the making of the illegal payment." With regard to the points taken by the applicants (1) That the surcharge was an improper limitation of the discretion vested in the council under s. 62 of the Metropolis Management Act, 1855, which provides that they may employ such servants as may be necessary and pay them such salaries or wages as they, the council, may think fit. It was argued upon their behalf that it was the council who were to be the judges of what they thought fit, and that if they exercised their discretion honestly, as was admitted in the present case, the auditor had no right to interfere. They admitted that an auditor had a right to disallow an item contrary to law and to surcharge the same, but contended that an item contrary to law meant an item of payment which was *ultra vires, e.g.*, to a person or for an object to whom or for which they had no power to devote it. Great reliance was placed on their behalf upon the case of *R.* v. *Carson Roberts*, 52 SOL. J. 171; 1908, 1 K.B. 407, and it was said that the price to be paid for labour did not stand on a different footing from that to be paid for materials as far as the right of the auditor to surcharge was concerned, and that in the present case they were entitled to set an example as a model employer and to pay the £4 a week in question. It therefore became necessary for their lordships to state their view as to the proper construction of the two sections above referred to. They did not, however, desire to lay down any hard and fast rule as to what sum a borough council might or might not expend, or what sum a district auditor might or might not surcharge. They did not desire to say anything to fetter or hinder their discretion when properly exercised. What might be proper to be paid in one year might be entirely improper to be paid in a subsequent year. What might be proper to be paid in one district might not be proper to be paid in another. Nor did they desire to fetter or embarrass the discretion of an auditor in his duty of coming to a conclusion as to whether a surcharge should or should not be made. The question on a proper determination of the law became largely one of fact. To deal with s. 62 of the Metropolis Management Act, they could not think the words "as they think fit" entitled a council to pay any sum they liked to any of their employés. The council were in a fiduciary position, not merely towards a majority who had elected them, but towards the whole of the ratepayers. A councillor was not entitled to be unduly generous at the expense of those on whose behalf he was a trustee. Their lordships thought that a payment to a servant, entitled to be employed and entitled to be paid by the council, might be of so excessive a character as to go beyond the limits of legality and become an illegal or *ultra vires* payment. In cases near the line it would be as difficult for an auditor to surcharge as it would be for that court to overrule an auditor. Supposing that a wage of £3 was admittedly proper, and the wage paid was £3 3s., it might be that in such a case an auditor could not and probably would not interfere. Supposing, however, that a wage of £3 was a reasonable one, and a wage of £30 had been paid, there would, in their view, be material upon which an auditor could and ought to find the payment to be illegal, and to make a surcharge in respect thereof. In their lordships' view the present case was not near the line. The auditor had gone into very careful calculations and had taken into account everything that ought to have been taken into account. They were of opinion that the sum in question was of such a character as to be brought within the words "an item of account contrary to law" within the meaning of s-s. (7), and they therefore thought that he was right in disallowing and surcharging it as he did. With regard to an allegation that there had been an agreement or understanding between the councillors and the employés as a result of which, if it had been proved, the Court would not have thought it right to support a surcharge in respect of payments made in pursuance of such understanding, their lordships found, on the evidence, that no such agreement or understanding had been come to. In the result they were of opinion that the rule should be discharged with costs. Rule discharged.—COUNSEL: *Talbot*, K.C., and *Sir John Lithiby*; *H. H. Slesser*; *F. G. Enness*; *Montgomery*, K.C., and *Naldrett*. SOLICITORS: *Last, Sons and Fitton*; *W. H. Thompson*; *Solicitor to Ministry of Health*; *White & Leonard*.

[Reported by J. L. DENISON, Barrister-at-Law.]

Mr. William Jones, of Newport-road, Cardiff, retired solicitor and notary public, who died on 19th August, 1923, aged eighty-two, left estate of the gross value of £23,743, with net personalty £11,831. The testator left £100 to King Edward VII Hospital, Cardiff; £100 to John August Day, as a token of appreciation and regard for many years' service as managing clerk; and £20 to Edith Davies, if in his service at his death.

New Orders, &c.

Home Office.

THE FAIRS ACT, 1871.

THE LOCAL GOVERNMENT ACT, 1894.

BURTON-UPON-TRENT HORSE FAIR.

The Secretary of State for the Home Department hereby gives notice that a representation has been duly made to him by the Town Council of Burton-upon-Trent to the effect that it would be for the convenience and advantage of the public that the Horse Fair which has been annually held on the 28th day of October or, if that day be a Sunday, on the following day at Burton-upon-Trent, in the County of Stafford, should be abolished.

On the 28th day of February, 1924, the Secretary of State will take such representation into consideration, and any person who may desire to object to the abolition of the Fair should intimate his objections to the Secretary of State before that day.

Home Office, Whitehall,
25th January, 1924.

Ministry of Health.

NATIONAL HEALTH INSURANCE.

COURT OF ENQUIRY INTO THE REMUNERATION OF INSURANCE PRACTITIONERS.

AWARD.

We, the undersigned, being the Court of Enquiry appointed by a minute of the Minister of Health and the Secretary for Scotland dated the 12th December, 1923, have enquired into the matter mentioned in such minute and hereby report that the amount of the capitation fee per insured person per annum on the basis of which the Central Practitioners Fund under Article 19 of the National Health Insurance (Medical Benefit) Regulations, 1924, should be calculated as from the 1st January, 1924, so as to afford adequate remuneration for the time and service to be given by general practitioners under the conditions set out in those Regulations in connection with the medical attendance and treatment of insured persons, due regard being had to the service in fact rendered under the Regulations hitherto in force (such capitation fee not to include any payment in respect of the supply of drugs and appliances nor any payments to meet the special conditions of practice in rural and semi-rural areas), is nine shillings.

In the course of the enquiry it was stated on behalf of the Minister of Health and the Secretary for Scotland and on behalf of the British Medical Association that our finding was only intended to be binding for the year from the 1st January, 1924, to the 31st December, 1924, but that both parties desired the Court to make a recommendation covering such longer period as we should think fit.

We therefore recommend that the capitation fee of nine shillings so found by us should remain in force for a period of three years from the 31st December, 1924.

T. R. HUGHES.
F. C. GOODENOUGH.
GILBERT GARNSEY.

R. H. CROOKE,
Secretary to the Court.

23rd January, 1924.

TOWN PLANNING.

SUPPLEMENT TO MODEL CLAUSES.

The Minister of Health is about to issue a supplement to the Model Clauses published for use in the preparation of Town Planning Schemes. The purpose of the amendments and additions is indicated in explanatory notes printed in italics in the Supplement.

In particular, provisions are included for enabling the regulation of streets in a town planning area to be dealt with wholly in a Scheme, instead of partially in a Scheme and partially in bye-laws, thus, it is hoped, avoiding a dual system of control and introducing a desirable simplification.

The Supplement will be placed on sale and can be obtained through any bookseller or directly from H.M. Stationery Office, Imperial House, Kingsway, W.C.2.

Ministry of Health,
Whitehall, S.W.1,
28th January, 1924.

Appointment of Secretaries.

The Rt. Hon. John Wheatley, M.P., Minister of Health, has appointed Mr. A. N. RUCKER to be his Assistant Private Secretary.

Mr. Arthur Greenwood, M.P., Parliamentary Secretary of the Ministry of Health, has appointed Mr. H. H. GEORGE, M.C., to be his Private Secretary.

Ministry of Health.

The following circular letter has been issued to local authorities:

HOUSING, ETC., ACT, 1923.

Ministry of Health,
Whitehall, S.W.1.
31*st December*, 1923.

Sir,

With reference to the concluding sentence of paragraph 13 of the Circular addressed to Local Authorities on the 14th August last (Circular 388a), I am directed by the Minister of Health to say that the following model forms have been prepared by the Department for the guidance of Local Authorities, and are now available:—

(1) Model form of mortgage to secure advances made by a local authority under Section 5 (1) (*a*) (i) of the Housing, &c., Act, 1923. (Hsg. 50.)

(2) Model form of contract for sale by a local authority of land acquired for the purposes of the Housing Acts, the purchaser undertaking to erect a house and the local authority to pay a lump sum grant. (Hsg. 51.)

(3) Model form of agreement for building lease, the local authority paying a lump sum grant of an amount equivalent to the premium. (Hsg. 52).

These forms have been placed on sale and may be purchased (Hsg. 50 and 51, price 2*d.* net each; and Hsg. 52, price 3*d.* net) through any bookseller, or directly from H.M. Stationery Office, at the following addresses:—Imperial House, Kingsway, London, W.C.2, and 28, Abingdon Street, London, S.W.1; York Street, Manchester; 1, St. Andrew's Crescent, Cardiff; or 120, George Street, Edinburgh.

It should be clearly understood that these forms are intended merely to serve as models for the guidance of the draftsman in framing instruments to suit the requirements of the particular scheme of assistance adopted by the local authority. Their applicability, with or without modification, to the circumstances of any particular case is a matter for the advisers of the authority.

I am, Sir,
Your obedient Servant,
E. R. FORBES,
Assistant Secretary.

The Clerk to the
Local Authority.

Railway and Canal Commission.

THE RAILWAY AND CANAL COMMISSION (MINES WORKING FACILITIES) PROVISIONAL RULES, 1923.

Rules made by the Railway and Canal Commissioners under Section 20 of the Railway and Canal Traffic Act, 1888 (51 & 52 Vic. c. 25), in regard to References under the Mines (Working Facilities and Support) Act, 1923 (13 & 14 Geo. 5, c. 20).

(1) Upon a reference under the Mines (Working Facilities and Support) Act, 1923, of any matter by the Board of Trade to the Railway and Canal Commission the Board shall lodge with the Court all papers, documents, plans and material deposited by the applicant with the Board for the purpose of procuring the reference.

(2) The Board of Trade shall give notice to the applicant of the lodging of such reference with the Court, within three days after the reference has been lodged.

(3) Within 10 days of the date of the notice by the Board of Trade that a reference has been lodged the applicant shall apply to the Registrar to fix a date for the hearing by the Court of a summons for directions as to the procedure to be followed upon such reference and the Registrar shall give notice to the Board of Trade of the date of the hearing of such summons.

(4) Except as is herein provided the Rules of the Railway and Canal Commission Court shall apply.

(5) These Rules may be cited as the Railway and Canal Commission (Mines Working Facilities) Provisional Rules, 1923.

The Railway and Canal Commissioners hereby certify that on account of urgency the said Rules shall come into operation on the 1st day of January, 1924, and hereby make the said Rules to come into operation on that day as Provisional Rules.

Dated the 27th day of December, 1923.

John Sankey.
Robert L. Blackburn.
E. Tindal Atkinson.
J. C. Lewis Coward.

Approved,
Cave, C.

Approved,
P. Lloyd-Greame,
President of the Board of Trade.

LAW REVERSIONARY INTEREST SOCIETY

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G. H. MAYNE, *Secretary.*

Societies.

Lincoln's Inn.

LINCOLN'S INN WAR MEMORIAL.

Mr. Justice Eve presided at a meeting of barristers of Lincoln's Inn on Tuesday afternoon for the purpose of deciding upon a war memorial to be placed on the Bar Table to the memory of those who gave their lives in the war. On the motion of Lieut.-General Sir George Macdonogh, seconded by Mr. T. R. Hughes, K.C., a silver bowl was decided upon. The Admiral-Superintendent of Portsmouth had offered a piece of oak from the Monarch to form a plinth for the memorial, and this was gratefully accepted. A committee was appointed to carry out the decision of the meeting. Subscriptions may be sent to Mr. E. Atkin, 1, Paper-buildings, Temple, or to Mr. J. H. Bowman, 24, Old-buildings, Lincoln's Inn, W.C.2, who are acting as honorary secretaries.

The Middle Temple.

Mr. Kellogg, the United States Ambassador, was admitted an honorary bencher of the Middle Temple at "call night" in the Inn on Monday evening. He had a very cordial reception when he entered the hall accompanied by Sir Robert Wallace, K.C., who has succeeded Lord Carson as the Treasurer. Other distinguished members of the United States Bar who are honorary benchers of the Middle Temple are Mr. W. H. Taft and Mr. J. W. Davis. Mr. Choate also was similarly honoured during his Ambassadorship.

The Law Society.

SPECIAL GENERAL MEETING.

A Special General Meeting of the Law Society was held at the Society's Hall, Chancery Lane, on Friday the 25th ult., Mr. R. W. Dibdin (London, President) in the chair. Among those present were the following members of the Council: Mr. W. H. Norton (Manchester, Vice-President), Mr. Ernest Edward Bird, Mr. Harry Rowsell Blaker (Henley-on-Thames), Mr. Alfred George Coley (Birmingham), Mr. Weeden Dawes, Mr. Herbert Gibson, Sir John Roger Burrow Gregory, Mr. Dennis Henry Herbert, M.P., Mr. Leonard William North Hickley, Mr. Arthur Murray Ingledew (Cardiff), Sir Charles Elton Longmore, K.C.B., V.D. (Hertford), The Hon. Robert Henry Lyttelton, M.A., Mr. Charles Mackintosh, LL.D., The Rt. Hon. Sir Donald Maclean, K.B.E., Mr. Philip Hubert Martineau, B.A., Mr. Charles Gibbons May, Mr. Robert Chancellor Nesbitt, M.P., Sir Arthur Copson Peake (Leeds), Mr. Reginald Ward Edward Lane Poole, B.A., Mr. Harry Goring Pritchard, Mr. Charles Scriven, LL.B., O.B.E. (Leeds) and Mr. Francis Edward James Smith, M.A.: also Mr. E. R. Cook (Secretary) and Mr. H. E. Jones (Assistant Secretary).

CENTRAL COUNTY COURT.

Mr. JAMES DODD (London) asked "What progress has been made towards the establishment at the Law Courts of a Central County Court where actions can be tried by agreement between the parties." He said that some time ago he had carried at a general meeting of the Society a motion in favour of the establishment of such a court as he was advocating. He asserted that the court would save a great deal of trouble to the solicitors, for they would not be compelled, as was the case at present, to attend at Edmonton, Barnet and other out-of-the-way places, where they might have to hang about all day, waiting for their cases to come on. He had been waiting for a long time in the hope that the Council would do something, but he could not hear of any progress having been made. What was also wanted was a County Court Clearing House, where summonses could be issued. This would save a very great deal of trouble, and the waste of much time.

The PRESIDENT said the Council had given very full consideration to the matter, and had referred his resolution to the County Courts Committee, which was a very strong committee, and that committee had issued a report, dated 7th May, 1920, in which they recommended that the attention of the Lord Chancellor should be directed to the report of their committee and to other documents which they enclosed. That report was in favour of the suggestion contained in the resolution which had been passed. The Council's letter was dated 26th May, and it was acknowledged "with many thanks" by Sir Claud Schuster on the 27th. The Council again wrote later to the Lord Chancellor, and they were told that the matter was still receiving consideration. A letter from Sir Claud Schuster, dated 22nd February, 1920, was as follows: "In reply to your letter of the 21st February, naturally the suggestion of the Law Society will receive the most careful and sympathetic consideration by the Lord Chancellor. Could you, however, in order to place him in a position better to appreciate what is desired, somewhat simplify the proposal? It is, I think, obvious that this is one of the cases where everything turns on detail. For example, where is the plaint to be taken out, and how is the agreement to be obtained? Is the judge to be the Westminster judge sitting at the Strand sometimes, and at Westminster sometimes, or a new judge appointed for the sole purpose of hearing these cases? (It seems to me that if what is desired is certainty and expedition, it will be necessary either that one judge should always sit at the Strand and sit nowhere else, or that there should be a rota of London judges providing continuous sittings.) How are the officials, etc., of the court to be supplied, and how paid? Is the power of remitter, which has been simplified by the Act of 1919, to be exercisable so as to send a case for trial to this new court irrespective of agreement? What is the object sought to be obtained by the trial being in the Royal Courts of Justice rather than, say, at Westminster or elsewhere? Please do not assume from these questions that I am hostile to the proposal. I know that it is favoured by many county court judges, but I should like to know the arguments in favour of it." An answer was sent by the Council, and the matter was again being carefully considered by the Lord Chancellor. Of course, as the meeting knew, there had been a rather rapid succession of Lord Chancellors lately. He did not know whether that had had any effect on the consideration given to the subject, but the Council would not abstain from still pressing it on the Lord Chancellor, whoever might occupy the office.

Mr. DODD said he thought it would be rather courteous if these questions were submitted to a general meeting of the members. He had never heard anything of these answers, and he had thought the whole thing had become dormant. The original suggestion was that the central court might be a branch of the Westminster County Court, established in the Strand Law Courts. It was perfectly clear that if the business was large the courts would be kept going by deputy judges. Under present conditions the congestion was such that cases were adjourned time after time. He had recently been kept at a county court knocking about three whole days over a case, and it had then been adjourned to another day. Surely something could be done to remedy the present state of affairs. Now that there was a new Lord Chancellor it might be possible to get something done.

AMERICAN BAR ASSOCIATION VISIT.

Mr. EDWARD A. BELL asked the following question: "Whether the Council's arrangements for the entertainment of the American Bar Association during its visit to this Country will include a Reception, to which ladies accompanying the Association will be invited?" He said his reason for putting the question upon the notice paper was that he was fortified by the recollection, and it was common knowledge, that there had been a very considerable increase of the income of the Society, and, therefore, it really did seem to be within the bounds of reason that there would be an area of opportunity for entertainment such as he suggested.

The PRESIDENT said that the visit of the American Bar was really a great and important matter, not only internationally, but between England and America, and they were bound to feel that it provided a great opportunity and was a matter of very considerable magnitude. The latest report was that about 750 barristers would come from America, whilst a large number of the members of the Canadian profession were coming over to join as hosts, to the number of something like 500. So that including the ladies, or any members of their families who might take the opportunity of coming to England, there would be a very large number, and the dealing with the subject was a very important matter. He was on the joint committee of which the Attorney-General was chairman. He had attended a meeting of that committee on the previous evening, when the new Attorney-General presided, and the subject was fully considered. Up to the present, however, information of the kind asked for could not be given, but there would be no objection to stating what had been done when a decision had been arrived at. Naturally, dining would enter into a matter of this kind, but it would be rather difficult to entertain 700 visitors, without

mentioning their hosts. Many suggestions were made at the meeting, and it was hoped that some suitable action would be arrived at. A strong opinion had been expressed in favour of ladies being admitted to the banquets, so that possibly Mr. Bell's wish might be carried out. It had been settled that the guests should come over on the 20th July. He believed they had hired a liner ship for themselves; and had, with the assistance of Messrs. Cook, taken rooms in London which it was hoped would be adequate to house the whole number.

AUDIENCE OF SOLICITORS.

Mr. DODD moved "That it is to the public interest that Solicitors should have audience in all Courts co-equal with barristers and that the Council be directed to take such steps as may be necessary in order to secure this reform." He said that the question was one which affected more materially the larger body of the profession practising in the provinces. Most of those practising in London did not specialise in advocacy, and they had the barristers at their elbows, so to speak, whenever they required their services. But matters were very different in the provinces, where almost every solicitor had to appear at times in the police courts or the county courts, and there were occasions when it was extremely difficult to find fees for counsel on the part of the struggling tradesmen and others who were the suitors. Very often the solicitor had to go short of the money he received from the client in order that counsel's fees might be paid. Poor people had often to pawn everything they possessed, and to borrow money from their friends in order to raise the necessary fees for counsel. He suggested that the practice of advocacy came to the solicitor branch of the profession through the county courts, and that the solicitor was no longer to be ignored in this respect by the Bar. The Bar had of late raised their fees, and they were absolutely appalling so as to render the penalty the losing litigant had to pay a very terrible one. In a small possession case in the county court he had known the costs to amount to £50, and the result to the poor wretch laden with counsel's fees was that his furniture was seized and his home was sold up. The law ought to be open to both rich and poor, without this frightful burden of costs, and he was hoping that at some time the reform he was advocating would be brought about, just as solicitors had to-day the right of advocacy in the county courts and the police courts. The sooner the solicitors were freed from the tyranny of the Bar the better it would be. It was argued in opposition to his suggestion that if the solicitors took away a privilege of the Bar, the Bar would want to take away the privileges of the solicitors; but, personally, he was not afraid on this account. In order to do the work of solicitors the members of the Bar would be compelled to have large staffs of clerks, and if the members of the Bar could be made responsible for negligence it would be found that a good many barristers would have to pay damages. It was also said that the proposal was in the nature of fusion. He did not like the idea of fusion. It was an American institution, and he was glad that he did not have to practise in America. He had also a sort of conservative regard for the Bar. Therefore, he should like to keep the Bar as a superior body, occupying a position similar to that of the doctors of Harley Street. Then people who needed their services could go to them, if they chose. The result would be that there would be a very fine class of men doing their special work, instead of a great many men doing all kinds of work, as at present. This was, as he had said, a question which affected more materially the larger body of the profession in the provinces. When he had brought the matter forward at a previous meeting he had come to the conclusion that it was not fair that the solicitors in the provinces should be excluded from expressing their views simply because they could not travel to London to be present at these meetings. Therefore, if he was defeated, he would ask those present, who were in his favour, to unite with him in demanding a poll. So long as he lived he would fight for this reform, and he hoped he should live long enough to see it carried into effect.

Mr. S. S. SEAL (London) seconded the motion. He said that Mr. Dodd's arguments were absolutely overwhelming in favour of extending to solicitors, at all events in the provinces, the right to act as advocates. Without doubt, many solicitors were fit for the position. He did not apprehend that this would meet with any disfavour on the part of the Bar, and it would certainly be of great assistance to the client in the direction of saving him expense.

Mr. E. BRABY (London) said that Mr. Dodd had said that his resolution did not amount to fusion, but he thought it was very difficult to say where the difference lay. The only thing that counsel did and that the solicitor was not allowed to do was to appear in the High Courts. The Society had already expressed its opinion with regard to fusion in no uncertain terms. They had very clearly given their opinion as a body by a large majority that they did not want fusion.

The PRESIDENT said that numbers on the poll were for fusion 1,820, against 3,531.

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Mr. BRABY said that was nearly two to one.

A MEMBER asked what was the date of the poll?

The SECRETARY replied that it was 1920.

Mr. BRABY said that Mr. Dodd might possibly say that everything had changed since that time, that we had now a Labour Government, amongst other matters. But his experience was that the solicitors were a very stable body and they did not change rapidly. He did not know that there were any solicitors in Parliament who represented Labour, and he believed that the members of the Society were still of the same opinion as they were on the occasion which had been referred to. And although Mr. Dodd had suggested that the Bar were such a noble body that they would not ask for anything in return for giving up their privileges to about 12,000 solicitors, he did not think they would be quite so magnanimous. He was convinced they would oppose the suggestion tooth and nail. There was a further objection which had not been mentioned by Mr. Dodd. He had particularly referred to the provincial solicitors, and it must be remembered that provincial solicitors paid a lower duty than did the London solicitor. The London solicitor paid a higher tax for the privilege of practising exclusively in the London courts. Mr. Dodd's proposal would have to allow for a further change, in that the country solicitor practising in the London courts should also pay the higher duty. He supposed that would follow, but he would like some elucidation on the point.

Mr. R. VAUGHAN (London) said he had had experience of the effect of solicitors and barristers having the same privilege of audience. He was speaking particularly of Canada, where the system worked uncommonly well and the client consulted barristers and solicitors. There the public would never think of returning to such a practice as existed in this country. There were several things not mentioned by Mr. Dodd which could be urged against his proposal, but, on the other hand, there were many that could be urged in its favour. He believed that what was best for the public was best for the profession, and he could not see why the public should have to pay a fee of seven guineas for counsel to get up in court to do such a thing as take a judgment in default of a plea, and there were many similar matters. Take, for instance, Order 14, which order largely consisted of claims, and often the defendant for the purpose of gaining time managed to put forward an absurd defence, which, at any rate, would raise an issue. He quite agreed that there was a very large amount of business which solicitors would not undertake for a moment. That would be specialist's work. But there was a very large volume in which the services of counsel were not required. He did not think the difference the change would make to counsel would be anything really material, but it would certainly relieve clients of what was at present an intolerable burden, and he was quite sure that it would result in a little time in an improvement generally in the status of the solicitor.

Mr. C. G. MAY (London, member of the Council), said that, although he was on the Council, he did not profess in any way to speak for the Council, but only for himself. His view was that the proposition was not likely to attain any measure of success, because it was a one-sided proposal. He thought that if they were seeking to take a privilege which was at present monopolised by the Bar they should ask themselves what they were going to give the Bar in return. He himself believed in fusion. He believed that if the two professions were practically consolidated, there would be no doubt that, as was the case in America and Canada, certain individuals would specialise at the Bar, while others would specialise as solicitors and do nothing but solicitor's work. They would not go into court.] The proposal before the meeting was simply that solicitors should be entitled to audience. That was taking a part of the barrister's work. Solicitors did not, on the other hand, give them the right to join their branch with little or no interval, and he thought they must face that question. He himself believed it would be a most beneficial thing to fuse the two professions, to bring them together, to let them pass from one to the other at their will. That would do away with the difficulties about counsels' fees and the quite ridiculous questions as to proportions of fees, and so forth. It would make an end to half of those difficulties, and there would be no such thing as the two-thirds rule with regard to counsels' fees. And, with regard to the question of negligence, he thought the Bar would have to face that, and he did not think they would fear to do so. He did not agree that there would be more actions for negligence than there were at present against solicitors. There were very few of these, and he did not believe the Bar would run any terrible risk on this account. He quite agreed that solicitors should have audience, but he thought they must hold out to the Bar the right to do solicitor's work, and that meant fusion.

Mr. F. R. NOTT (London) said that the question was whether the change proposed was in the public interest or not. What was in the public interest was, in the long run, in the interest of the profession, and the arguments against the proposition dealing with the question of fees were those of the barristers, or fusion, or what the solicitors were going to suffer should the Bar not agree. The present position was unsatisfactory and unsound in the way in which it affected the interests of the solicitor. The status of the solicitor was not satisfactory. It had not, on the whole, induced men from the Universities, educated and trained men, to take up the solicitor's profession as a career, for the simple reason that all promotion from it was practically stopped to public legal offices, which were almost entirely confined to the Bar. And the reason for this was that it practically went out to the public that the solicitor was unfit to be heard in the High Court of Justice. He quite agreed with Mr. Dodd that the enormous fees which had to be paid to the Bar and the costs incurred in small cases were entirely unnecessary. There certainly would be specialisation of function, but why there should be compulsory specialisation to prevent a solicitor taking a case at Quarter Sessions or in the High Court, if his client wished him to do so, he could not see. And he thought the time had come when the solicitors should pass a resolution as suggested and see what reply the Bar would make. They could consider that reply when it was received.

Mr. R. C. NESBITT, M.P. (London, member of the Council), said he thought they must all feel sympathetically towards the resolution, at all events when the matter was first put before them. But he could not for himself feel that they could take the step contemplated without knowing the views of the profession as a whole, or that they would be wise to do so without considering as to the consequences which would ensue to the profession. They would have seen at once from the remarks made by Mr. May that he did not think they could stop without going the length of fusion; and another speaker had said that it would be necessary to consider when they went to the Bar what they were to offer them in return, if they were asking for their support. So that it was necessary to see where the resolution was going to take them. He should have thought that if the motion were carried the course they took in 1920, when the subject of fusion was before them, would be again adopted and that all the members of the Society should be asked by means of a poll what was their view, and he thought it would be agreed that that would be the right course. Mr. Dodd had very rightly reminded them that the matter was of consequence to the provincial members, more than to the London members of the Society. That might or might not be. But they knew that the autumn provincial meetings of the Society were more numerously attended by the country solicitors than were these general meetings at the Hall of the Society in London. The provincial law societies, the solicitors in the provinces, might not be in favour of the motion, and he thought the Council would be very unwise to act merely on a resolution passed at the present meeting. He did not think the motion ought to be adopted without a great deal more consideration than it could receive at that meeting. It said, perfectly properly, that it was in the public interest. He should be quite prepared to argue that it was not in the public interest or in the interest of the solicitors' profession that this step should be taken, but when the Council were directed to take such a step they must not act upon a resolution passed at a meeting at which a comparatively few members were present. The Council could not act without the support of a vast majority of the members obtained on a poll. They could not otherwise embark upon what undoubtedly would be a controversial matter of a difficult character with the Bar; that would be unwise. In that respect he thought the motion went too far. He might say, without any disrespect, that some rather loose language had been used with regard to counsels' fees. He was not embarking on that subject to-day, but he thought that there was a good deal of misconception in the minds of many of the members with regard to the question of fees to counsel. Speaking for himself, certainly he could not subscribe to the doctrine that fees to counsel were excessive and out of proportion to the work done. He quite recognised that in the case of the great leaders of the Bar, their fees were very high, but they were entitled to those fees. It was a matter of supply and demand. It was for the client to say whether he would engage the services of any particular leader of the Bar. The client would at once say when the solicitor pointed out the cost, "Never mind about that. We must have him." The leaders of the Bar who commanded these high fees were few in number. The juniors did an enormous amount of the work of the Bar. Those practising at the Chancery Bar and in the earlier stages of common law actions he did not think were at all highly paid. He did not share the view that counsels' fees generally were excessive. He hoped the meeting would not pass the resolution, and he suggested that Mr. Dodd should take into consideration what had fallen from Mr. Nott as to the position of the profession in the estimation of the public. He disagreed with him in his statement that the profession was not being recruited from men who were educated and highly trained and from the universities, because he knew that that was not the case.

Mr. NOTT: I said that that was the case in the past.

Mr. NESBITT said that his experience went back, not perhaps so long as Mr. Nott's, but he asserted that for many years and

further back than the experience of many of those present, the men coming into the profession had been highly educated, and he wanted to enter his protest against any belief to the contrary. He thought they ought to pause before agreeing to a motion of this character and, considering the circumstances, before it had been thoroughly thrashed out in all its bearings. He suggested that Mr. Dodd should be satisfied with the very useful discussion which had taken place, and that, having regard to the provincial solicitors, whose opinion should be considered, he should read a paper on the subject at the next provincial meeting. It would be held at Manchester in the autumn, and there would be the opportunity of freely discussing the whole matter when it had been crystallized in the paper he suggested Mr. Dodd should write. He should be glad if Mr. Dodd could see his way to letting the motion stand over until that time.

Mr. DODD, in reply, said he had read a paper at one of the provincial meetings and there were only half a dozen members present. The rest had gone on excursions. It was no use trying to do what he was asking in that way.

The SECRETARY said that the procedure at the provincial meetings was changed, in order to avoid anything of the kind Mr. Dodd had complained of.

Mr. DODD said it happened at the provincial meeting two years ago. He was perfectly willing to accept an amendment that the matter should be referred to a poll of the whole of the members of the Society. He wished for that course. He thought it was right that the members should have an opportunity of pronouncing upon the question, which they all agreed was one of great importance. So far as the bogey of fusion was concerned, he did not care what was to happen in the future. One step was enough for him, so long as it would lead in the right direction. What was wanted was to get a move on. The question was whether solicitors were to still remain under the present system and if they were to be intimidated by the barristers. If the solicitors acted with the right spirit they would get what they wanted. Somebody had been bold enough in the first instance to propose that solicitors should have audience in the county courts and even in bankruptcy, and he did not think the Bar caused much trouble by its opposition at that time, and he did not know that the Bar had suffered very badly as a result. He was perfectly certain that if this concession were extended to the solicitors and they got audience in the courts co-equal with barristers, they would be co-ordinating with the Bar in the public interest. The proper thing for the profession was to look after the interest of the public. He was perfectly willing that the question should be referred to a poll and he would accept an amendment to that effect.

The motion was negatived, thirty-two votes being given in its favour and fifty-eight against.

Mr. DODD: I ask for a poll.

The PRESIDENT pointed out that under the bye-laws there must be a written request for a poll by twenty members who were present at the meeting.

Mr. BELL suggested that, with the view of saving expense, the poll should be taken by means of the circulation of the Society's *Gazette*.

The PRESIDENT said that could not be done. The procedure must be by way of the bye-laws.

Mr. DODD handed in a request for a poll signed by twenty members, as required by the bye-laws.

The PRESIDENT appointed the following members as scrutineers: Mr. E. A. Bell, Mr. H. W. D. Knight, Mr. L. North Hickley, Mr. C. W. Cross, and Mr. A. L. Carpenter. He named Friday, 22nd February, at two o'clock, as the date for receiving the report of the scrutineers. No other business would be transacted at that meeting.

LUMP SUM BILLS OF COST.

Mr. BELL moved "That this Meeting observes with satisfaction, the concerted and unanimous recommendation by the Council of the legislative proposals enabling Solicitors to render Gross Sum Charges in lieu of itemized Bills of Cost." He said that the subject had been discussed at general meetings on a considerable number of occasions, and he remembered a paper on Solicitors' Remuneration read by Mr. Nesbitt, which really was an exhaustive review of the arguments in favour of the suggestion. The system of bills of cost of solicitors had existed from the time of the Plantagenets, when the status of the attorney was very different from the status of the solicitor branch of the profession of to-day. In this connection it would be especially well to remember that, thanks to the energy of the Council present and past, there was now a Law School, which he sincerely and piously hoped would in time become a University. That status, he ventured to think, entitled the members of the profession to send in to their clients bills of charges which should not consist of idiosyncratic items with persistently reiterated platitudinal rigmarole, such as they were at present required to put in their bills of cost, with the unnecessary repetition of formulæ of relatively insignificant charges for services rendered. The bill could be summed up in a succinct sentence which every member of the profession was capable of drafting and putting before the proper officer. By the word "gross" he simply meant without going into items. He moved the resolution with the view of heartening and enhancing the efforts of the Council to bring about a reform which he believed was not unfair to the public at all, but rather for its benefit. This system would not, as now, disconcert the public by the bringing before clients of a number of items which they did not understand, but it simply proposed to give the amount of the bill in a concrete form. He left the resolution with confidence to the meeting, feeling sure that they would see its sweet reasonableness.

Mr. C. W. CROSS (London) seconded the motion.

Mr. SEAL said that he had observed that reference was made to numerous recommendations of the Council, and he did not know on what authority that statement was made. He was sorry he had not heard anything of assent or dissent on the part of the Council, or any member of it. He should have been pleased to have been informed authoritatively whether the suggestion met with the sanction of the Council. He could not help feeling the danger and difficulty there would be for the professional man when, instead of having to send in his bill of cost made out under the present regulations, he would have liberty to negotiate with the client—and the negotiation would take place in the client's room of the solicitor's office—as to what amount the client would commit himself to for costs for work which had yet to be done. It was to be borne in mind that the client would be very much, if not entirely, at the mercy of the solicitor. The client could not judge of the difficulties ahead as the solicitor could. The solicitor might, by a mere accent of speech, be able to convey to the client the feeling that there was a vast amount of responsibility which really did not exist. But, let them suppose there was a measure by which the solicitor might agree with the client for a gross sum——

Mr. BELL said that was not his motion. His motion was that the bill should be in substitution for the item bill of costs.

The PRESIDENT: "In lieu of the itemised bill of costs."

Mr. SEAL said that if there was to be a measure of this kind by which the solicitor's remuneration was fixed they could not over-rule that great fundamental principle, that, whatever agreement was come to, it must be a reasonable agreement. It must be borne in mind that the reasonableness of the agreement would not be brought before the Taxing Master, who went through details. It would have to be fought out in open court,

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before a judge, and possibly a jury. That would really be in opposition to the precept which they were all taught to observe, that what their clients esteemed as sacred might not be broken through, and the client was not at the meeting to give his view. He was the one who was greatly interested. They were proposing that the Council should put forward this change for the purpose of getting a measure of this kind carried into law, without the client having been taken into council. It was not rational. Moreover, had not the Society had before them more than once the suggestion that, if there was an insufficiency apparent to the practitioner under the code that now existed, there was no serious difficulty in getting it altered. It had been altered. Only recently a third was added to the solicitor's charges—that was the last alteration. It was competent to introduce measures of a similar character by which on any particular occasion the solicitor should be able to receive a greater emolument, and that should be taken into consideration. But it was not rational. It was not manly. It was wholly without regard to the client's position that the solicitor should seek to lay before a judge and a jury, and the whole court, perhaps, details of secrets of the most exclusive kind. If the client were to know beforehand that such particulars and details were in danger of being brought before the public, it would have the effect of preventing him from going to law at all, and he would submit to wrong or inconvenience to avoid it. He did not believe that Parliament would submit to a measure of the kind. But the client would certainly rebel against it. He regretted deeply, after a long experience of the profession and having seen many of its phases, that a measure of this kind should have been proposed by any member of the profession. He was certain that it would form a source of danger to the profession, and he sincerely hoped that the resolution would not be persisted in, and that, if any measure was required, it would be on the lines which at present existed and had existed for generations. He was speaking of the time when the statutory measures now in force were introduced. He altogether objected to any system being placed in lieu of it which would encumber the courts and tend to the disturbance of family associations and rights.

Mr. CROSS said that a great many members of the profession had adopted the lump sum bill system. For himself, he had found the clients only too pleased in many cases to agree to it. As to the terrible bogey that had been spoken of, he had been a member of the profession for a quarter of a century, and during that time he had sent in lump sum bills but had not suffered the terrible consequences which had been pictured.

Mr. BELL said that all Mr. Seal's arguments stultified the object he had in view. The only point which had really touched the subject was a wrong one. He said that when a bill was sent in it would go before a judge and a jury, but nothing of the sort would happen. It would go before a Taxing Master of the High Court, who would enquire into it in private, without the terrible results of disclosing secrets which had been spoken of, which, if the solicitor knew his business, were not disclosed.

The PRESIDENT said that the Council were, he thought, quite unanimously in favour of the proposition, and they were glad to hear that the meeting, with the exception of one speaker, would, as he understood, back them up in the course they had taken. The late Lord Chancellor had agreed to bring in a Bill to give effect to the representations of the Society, but he finally said he himself was unable to do so. In these circumstances steps were being taken to call the committee together on the subject, and that committee would carry out, as far as possible, the recommendations which had been made. It was hoped to carry into effect the almost unanimous wish of the profession that they should be allowed to charge lump sums, as was done by every other profession except the legal profession.

A MEMBER asked who were the Lord Chancellors to whom the President had referred?

The PRESIDENT replied that Lord Birkenhead had said he would bring forward a Bill. Lord Cave said that, although he was entirely in favour of the proposal, in the state of public business he could not see his way to introduce a Bill that year. He suggested that a private member should be asked to do so. The Council did not see their way to accept that suggestion.

The motion was carried, Mr. Seal alone voting against it.

THE "DAILY HERALD."

Mr. DODD asked whether there was any objection to *The Daily Herald* being added to the newspapers which were placed in the reading hall for the convenience of members. He had himself occasionally put a copy there, but it was always taken away shortly afterwards.

The PRESIDENT said this was a matter which should come before the House Committee.

The SECRETARY asked Mr. Dodd to put a note to the effect of his question in the "Suggestion Book," which was placed in the library.

The Young Offender Now and Then.

The first of the following extracts is from the *Morning Post* of the 30th ult.; for its context see under "Current Topics." The second is from *The Times* of 9th January, 1824.

I.

THE CHILDREN'S COURT.

At the next sitting of a Children's Court little Johnnie appeared before the magistrate. The Court, which was held in the room of a Town Hall, had no terrors for the young mind. It was so informal, just a rather solemn family gathering meeting for deliberation. No one was in uniform. The probation officers, the legal representatives, and the officers of the London County Council sat at a big table with the presiding magistrate at the head.

He was a man of much experience; gentle yet firm, and thinking always of the children. He talked with them as a friend, but never minimised the gravity of their misdemeanour. Johnnie, who had known so little kindness in his young life, warmed to him.

Introduced by a constable in plain clothes, who rested his hand on the lad's shoulder, Johnnie stood before the Court. His mother, who was present, remained standing at the far end of the table; a big, slovenly woman, who seemed to care little for her son.

When the small formalities were over the magistrate spoke to Johnnie.

"What were you doing out at that late hour," he asked.

"Nuffink, sir," came the familiar reply.

"But you mustn't say that. You know that you were helping others to break the law and steal things which did not belong to them. Aren't you sorry for that?"

"Yes, sir."

The police officer gave an account of Johnnie's home life. It appeared that his father was dead; his mother the only parent to a large family, of whom the eldest was just over fourteen. The boys roamed the streets when not at school. Indeed, it was difficult to ensure their attendance. The lad had been used by others, for his diminutive size made him handy in forcing padlocks on the wrong side of heavy gates.

What could be done for him. The police knew it was not the first offence.

The magistrate talked with his colleagues. They could remand him to the care of a probation officer, to whom he must report when called upon. But this would mean living again in his unfortunate home surroundings, and the boy was more sinned against than sinning.

They decided to send him to an industrial school, where he would be under authoritative care until he was sixteen, where he could learn a trade, find employment, and become a useful member of society.

II.

SOUTHWARK SESSIONS.—*Thomas Lunny*, apparently a mere child, the leader of a gang of young thieves, was put to the bar, and indicted for having stolen a waistcoat piece, the property of Thomas Bell, a tailor, of No. 99 Tooley-street. The prosecutor stated that his shop-window had been broken on the 19th of September, and the waistcoat piece dragged through it. There was a large gang of infantine thieves in the neighbourhood. . . .

The Recorder.—Prisoner, now is the time for your defence.

Prisoner.—Why, my Lord, what I have to say is this. As I was a going along Vinegar-yard, I saw some boys looking in at that *'ere* gentleman's shop, so I stood to see what they was *a'ter*; so one *on um* pulls out a bit of a waistcoat piece. He was a bad *un* to be sure, and he goes off; and then these *here* gentlemen, you see, *takes* hold of me; but I *knowed* nothing about it. . . .

The Recorder.—Now, prisoner, the best thing I can do for you is to send you out of this country. . . . You have been in prison before you know.

Prisoner.—Not I, my Lord; never, I assure you.

The Recorder.—Indeed you have. You have been in Horse-monger-lane gaol.

Prisoner (in a low tone of voice, and looking astonished).—Where's that, I wonder?

The Recorder.—The sentence of the Court on you is, that you be transported for seven years.

Prisoner.—Thank you, my Lord, it's only *eighty-four odd months a'ter all.*

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4%. Next London Stock Exchange Settlement, Thursday, 7th February.

	Middle Price. 30th Jan.	Interest Yield. £ s. d.
English Government Securities.		
Consols 2½%	56⅞	4 8 0
War Loan 5% 1929-47	106¼	5 0 0
War Loan 4½% 1925-45	96½	4 13 6
War Loan 4% (Tax free) 1929-42	101⅞	3 18 6
War Loan 3½% 1st March 1928	96⅛	3 12 6
Funding 4% Loan 1960-90	87¾	4 11 0
Victory 4% Bonds (available at par for Estate Duty)	91¼	4 8 0
Conversion 3½% Loan 1961 or after ..	76 5/16	4 11 6
Local Loans 3% 1912 or after	65	4 12 6
India 5½% 15th January 1932	100½	5 9 6
India 4½% 1950-55	85⅝	5 5 6
India 3½%	65	5 7 6
India 3%	57	5 5 0
Colonial Securities.		
British E. Africa 6% 1946-56	111	5 8 0
Jamaica 4½% 1941-71	93½	4 16 0
New South Wales 5% 1932-42	100	5 0 0
New South Wales 4½% 1935-45	91	4 19 0
Queensland 4½% 1920-25	98	4 12 0
S. Australia 3½% 1926-36	82	4 5 0
Victoria 5% 1932-42	101	4 19 0
New Zealand 4% 1929	94½	4 4 6
Canada 3% 1938	81½	3 15 0
Cape of Good Hope 3½% 1929-49	79½	4 8 0
Corporation Stocks.		
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54	4 12 6
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	64	4 13 6
Birmingham 3% on or after 1947 at option of Corpn.	64	4 13 6
Bristol 3½% 1925-65	75½	4 13 0
Cardiff 3½% 1935	86	4 1 6
Glasgow 2½% 1925-40	73	3 8 6
Liverpool 3½% on or after 1942 at option of Corpn.	74½	4 14 0
Manchester 3% on or after 1942	64	4 14 0
Newcastle 3½% irredeemable	74	4 15 0
Nottingham 3% irredeemable	64	4 14 0
Plymouth 3% 1920-60	69	4 7 0
Middlesex C.C. 3½% 1927-47	81	4 6 6
English Railway Prior Charges.		
Gt. Western Rly. 4% Debenture	84	4 15 0
Gt. Western Rly. 5% Rent Charge ..	102	4 18 0
Gt. Western Rly. 5% Preference	103	4 17 0
L. North Eastern Rly. 4% Debenture ..	83	4 16 6
L. North Eastern Rly. 4% Guaranteed ..	83	4 16 6
L. North Eastern Rly. 4% 1st Preference	82	4 17 6
L. Mid. & Scot. Rly. 4% Debenture ..	83½	4 16 0
L. Mid. & Scot. Rly. 4% Guaranteed ..	83½	4 16 0
L. Mid. & Scot. Rly. 4% Preference ..	83	4 16 6
Southern Railway 4% Debenture ..	83	4 16 6
Southern Railway 5% Guaranteed ..	102	4 18 0
Southern Railway 5% Preference ..	101½	4 18 6

Institute of Public Administration.

Sir Henry N. Bunbury, Comptroller and Accountant-General of the Post Office, says *The Times*, read a paper before the Institute of Public Administration in the Old Council Chamber of the London County Council, Spring-gardens, on 24th January, on "Control of Expenditure within Government Departments." He said that the essence of financial control, as he understood it, was that it involved giving to somebody the power of saying "yes" or "no" to something that somebody else wanted to do. When he referred to economy he meant something almost indistinguishable from efficiency. It meant, in the popular phrase, getting full value for money, with the underlying implication that that value was something which the taxpayer wanted. It was the opposite of waste. There was no doubt that at the present time the Treasury was entering more closely into what might be called the day-to-day work of spending Departments than it did before the war. But he was convinced that if they said that the people who were to secure economy in the expenditure of Departments were the Treasury, and relied on them alone, they would be following a road that would lead them nowhere.

By what means was a Department to secure economy in expenditure? The object would not, he thought, be gained by imposing inhibitions alone, or by separating financial from executive responsibility. All experience went to show that they needed to develop more, not less, of the money sense in administrative officials. The solution, he thought, lay in the establishment of a system based on such principles as the following:—

(1) Officials who were responsible for administering services should know continuously, in terms of pounds, shillings, and pence, the cost to the taxpayer of what they were doing. (2) Advice on the financial aspect of what they were doing, and of the things they proposed to do, should be readily available to them and should be freely sought. (3) So much financial control, and no more, should be imposed upon them as experience showed to be profitable. Administrators had to be taught to think, and to go on thinking, in terms of pounds, shillings, and pence.

The Gaskill Legitimacy Case.

At the Stratford Police Court, last Saturday, John Gaskill, of St. George Park-avenue, Westcliff, was summoned by the Romford Board of Guardians to contribute towards the support of his grandchild, Leonard Arthur Gaskill.

Mr. F. A. Stern, in opening the case, said the child in question was two years old, and he and his mother were being supported by the Romford Guardians. The son of the defendant took divorce proceedings against his wife, alleging adultery with some person unknown. The case was the one where the mother's period of gestation lasted eleven months. It was carried to the House of Lords. As a result the husband lost his petition for divorce. Lord Birkenhead, in his judgment, said that the unfortunate people had been the sport of nature, and suggested that the parties might come together again. They had not done so, however, and in January, 1922, the wife obtained an order against her husband to pay 25s. a week. He paid for some time, but in April, 1923, he disappeared, and the wife had to apply to the Guardians for relief. The husband could not now be traced, and the Guardians asked for the order against his father, the defendant.

Mr. W. Daybell, for the defendant, said that the decision of the judges was much criticised by the *Lancet* and it was unfortunate for the grandfather, after his son disputed the paternity, that he should be called upon to pay for the child.

The Bench ordered the defendant to pay 7s. 6d. a week.

[As to the views stated in the *Lancet*, see 67 Sol. J., p. 650.]

The late Mr. Aneurin Williams.

Mr. John Russell writes to *The Times* from Jordans, Beaconsfield:—

May I supplement the obituary notice of Mr. Aneurin Williams, whom I knew intimately for more than forty years? There are many of us who think that his article on a Society of Nations in the *Contemporary Review* for October, 1914, together with the active private efforts to which it immediately gave rise, prepared the way in this country for that co-operation with Mr. Taft's similar movement in America which eventually brought the League of Nations into being. A systematic inquiry into these origins is, I believe, already in hand, and it is hoped that the full honour denied to Mr. Williams in his life may presently be paid

to his memory. His devoted, almost impassioned, service on the Armenian Committee must also be mentioned. For long years he was one of the stanchest supporters and defenders that co-operative societies, in their various forms, have ever enlisted, and the garden city movement, of which at Letchworth he was one of the pioneers, owes more to him perhaps than to any other one man—unless it be Mr. Ebenezer Howard.

Though he was unattached to any religious organization, the dominating impulse of his life was deeply religious—to contribute his full share to the necessary work of the world, as well as to the alleviation of the self-inflicted sorrows of the world. His unfailing loyalty, in sickness as in health, to the first of these ideals none who knew him can question. Alleviation of world-sorrow it is less easy to measure, but there are thousands of people of all sorts who could give eager personal testimony to his generous, loving kindness. One of his most cherished dreams, especially in later life, was to find, or help to find, some new spiritual appeal that would rally the indifferent, the hopeless, and the disillusioned back to the banner of good. But even as he dreamed, his deep personal influence was already in itself such an appeal, though he was too modest to realize it.

A Woman who haunted the Law Courts.

Dr. F. J. Waldo, says *The Times*, held an inquest in the City Coroner's Court on the 24th ult., on the body of Nettie Cox, aged between fifty-five and sixty, who was found dying in Long-lane, City, a week ago, and who died in St. Bartholomew's Hospital.

Mr. A. H. H. Short, Secretary of the Poor Persons Department at the Law Courts, said the woman had been before him on several occasions since May, 1914, and had told him that she was a native of Christchurch, near Bournemouth. In 1905 the woman was certified as insane. She attempted to sue the Kensington Guardians, the L.C.C., the Asylums Board, the Royal Commission in Lunacy, several doctors, and two relations, for "unlawfully putting her in an asylum," but her application was refused. She used to haunt the Courts of Justice and thought that she was going to get the lunacy laws amended. She lived by accepting charity and doing needlework, and the Masters and staff at the Law Courts used to help her.

The Coroner: I have never seen such a skeleton of a woman as she was. Did she get sufficient to eat?

The witness said he should say that she had not done so for the past ten years. She would never say where she lived. She was a softly spoken, well-educated woman, and he believed that she had a sister-in-law alive in the Isle of Wight.

Mr. A. Sharpe, director of Messrs. Wilson's Printing Company, Turnmill-street, E.C., said that his firm used to do a little work for the woman. She was formerly a music teacher, and occasionally wrote a little religious music, which they used to print for her on small cards. She was very eccentric. She wrote in the name of "Miss M. C. Arsdale."

A police constable, who found the woman in Long-lane, said that she had in her possession 5s. 6½d. and twenty-one small keys.

After hearing the hospital doctor's evidence, the Coroner recorded a verdict that the woman "died from heart failure consequent on chronic bronchitis accelerated by starvation."

Companies.

Midland Bank Limited.

The Ordinary General Meeting of the Midland Bank Limited was held at the Cannon Street Hotel, London, E.C.4, on the 25th ult.

The Chairman (The Right Hon. R. McKenna), who presided, said:

It is more than three years since the returns of unemployment first showed a distressing increase, while the duration and intensity of the present period of depression are unprecedented in modern experience. The destruction of accustomed markets through the economic breakdown of a large part of Europe, political disturbance or uncertainty at home and abroad, violent changes from one type of demand to another at the close of a great war, the drain upon the essential supply of capital by over burdensome taxation—all these are conditions gravely injurious to trade and, so long as they persist, cannot fail to retard our full recovery. But the particular influence on trade upon which I propose to speak is that of monetary policy, a matter which I believe to be of much greater importance than is generally recognised and which certainly merits close examination.

Let me define the sense in which I shall use the word money. I understand by it all currency in circulation among the public and all bank deposits drawable by cheque. Monetary policy therefore concerns itself with regulating the quantity of money.

How Money is Created.

Under the system which prevails in our country, there is only one method by which we can add to or diminish the aggregate amount of our money. Gold coin is no longer minted, and additional paper currency is not issued except to meet the demands of the public. The amount of money in existence varies only with the action of the banks in increasing or diminishing deposits. Every bank loan and every bank purchase of securities creates a deposit, and every repayment of a bank loan and every bank sale destroys one.

While banks have this power of creating money it will be found that they exercise it only within the strict limits of sound banking policy, since they must keep a reserve of cash fairly constant in relation to the amount of their deposits. Thus a limit is placed on a bank's power of lending by the amount of its cash and additional loans can only be made if this cash is increased.

There are only two ways of adding to or reducing the cash resources of the banks. The first arises from the action of the public. If less currency is required in circulation and the surplus is paid into the banks their cash resources are increased; and conversely, if more currency is required in circulation and larger amounts are withdrawn from the banks, their cash resources are reduced. The second and principal cause of movement is action by the Bank of England. A loan or purchase by the Bank of England creates bank cash, or in other words adds to the banks' cash resources and by this means exercises a powerful influence on trade. Hence the importance of monetary policy.

Trade Revival Dependent on Broad Cash Basis.

Now it is generally accepted that if the price level be unchanged an increase in the volume of trade will require an increase in the volume of money. It follows that when trade is improving and the unemployed are being absorbed into industry, if the price level is to remain stable, monetary policy should be directed to an increase in the supply of money. But to permit of an increase in the total of employment the banks must obtain additional cash resources, and this can only be effected by the Bank of England letting out more money. Less money means lower prices or less production or both, and orders will be withheld so long as there is an expectation that prices will fall.

Before the war if conditions were such that more currency was required in circulation the Bank of England was compelled to buy gold in order to maintain its reserve with the necessary consequence of increasing the cash resources of the banks. But now no gold is bought by the Bank of England and, unless that institution makes additional loans or investments, there is an automatic throttle on the expansion of bank credit and the trade revival must be brought to a standstill. It is only by wise action on the part of the Bank of England that the restriction on trade revival can be removed.

Unfortunately, many people look upon any increase in the amount of money as inflation. They fail to observe the distinction between the different kinds of bank loans which create additional money. When a Government shrinks from raising sufficient revenue by taxation to cover its current expenditure and makes good the deficiency by borrowing from banks, I agree that inflation of this kind deserves unqualified condemnation. But a bank loan to a manufacturer or merchant, as the result of which more goods are brought into existence and placed upon the market, is on a different footing. In the first case the loan remains outstanding after the proceeds have been spent; in the second, when the goods have been produced and sold, the money received for them is available for repayment of the bank loan, or, to use a common phrase, the loan is self-liquidating. There is a distinct limit however to the justifiable creation even of productive credits. As soon as there is sufficient money to carry the full volume of production of which the nation is capable, no more should be created and the repayment of past loans should balance the extension of new ones.

Midland Bank Figures.

The past year has been eventful in the history of our own Bank. In the first place we have made a most desirable alteration in our title, a change which has been generally approved by shareholders and customers.

Turning to our balance sheet, in the course of twelve months current, deposit and other accounts have increased by nearly six millions to £360,267,723, a fact which indicates some improvement in trade. Our acceptances and engagements now stand at £36,552,607 as compared with £25,862,341 at the end of 1922, but the greater part of this increase is due to a rise in engagements resulting from the growing volume of business in forward exchange. The actual increase in the acceptances, representing an improvement in the volume of foreign trade, amounts to £2,844,453.

On the assets side of the balance sheet coin, bank and currency notes and balances with the Bank of England amount to £54,298,126 which maintains the ratio of cash to deposits at a figure in excess of 15 per cent.

Money at call and short notice is nearly one million lower at £16,187,565, while investments are 13¼ millions down on the year. Consideration of the next two items at once makes it clear that the funds so released have been utilised for the most part to finance industry. Bills discounted have risen by over twelve millions to £58,418,748, the greater part of this increase, about ten millions, being in fine trade bills. In addition, our advances to customers and other accounts have risen by nearly 9¼ millions to a total of £188,737,732.

Our net profit has suffered a reduction of about £43,000 to £2,210,972, so that with the amount brought forward from the previous year we have a total of £2,999,939 for appropriation, of which the dividend, at the usual rate of 18 per cent. less tax for the year, will absorb £1,502,870. Out of the balance £300,000 has been transferred to reserve for future contingencies, and £400,000 has been allocated to bank premises redemption fund. This leaves a slightly increased balance of £797,069 to be carried forward into the current year.

In conclusion, it is not perhaps too much to say that the indications are that we are nearing the end of a most trying period. Unfortunately we cannot yet claim that peace in its fulness has been restored to a war-stricken world. But the signs are not unpropitious, and inspired by the memory of difficulties overcome in the past I look forward with confidence to the future.

The report was adopted and the proceedings terminated with a vote of thanks to the chairman.

Westminster Bank.

The Annual Ordinary General Meeting of the shareholders of the above Bank was held at the Head Office, 41, Lothbury, E.C., on Thursday, the 24th inst. Mr. Walter Leaf (the chairman) presided.

The chairman, after a review of general conditions during the year under review as revealed by import and export figures, observed that though the effect of a revival of trade had shown itself rather tardily, yet the evidence of the last quarter of the year was fairly unanimous in speaking of better conditions and hopeful prospects. Not, of course, that the prospect was uniformly rosy. There were several very important industries in which unfortunately it could not be said that the corner had been turned. But in the majority of the bank's reports from all over the country, they heard, in one form or another, that the outlook was considered good, and that the new year was opening with confidence and hope. Following upon a review of the leading industries of the country he alluded to the Fordney Tariff, pointing out that the balance of trade, as between this country and America in the first nine months of 1923 compared with the first nine months of 1922, had moved nearly £27,000,000 in favour of this country.

The Political Situation.

Commenting upon the political situation, he said it was piquant and interesting; but for the business man not wholly unsatisfactory. Business wanted to be let alone; we had enough of Government interference during the war, and we had no desire to be made the subjects of rash experiments in economics, whether they took the form of deliberate inflation, protection, or capital levy. And from the fear of such experiments the election had delivered us, probably for a good many years to come. Government, it seemed, would in the near future be a matter not of rash legislation, but of administration carried on under constant and jealous observation, and subject to short shrift if it overstepped the limits of justice and sanity. That was not a prospect to inspire any serious alarm for the present. There was undoubtedly a feeling of uneasiness abroad—there had been a certain amount of selling of sterling investments in order to buy dollars. This had shown itself in the fall in the New York exchange; the fall which began with the talk about inflation had not been recovered as it should have been, and the pound sterling stands at a value in dollars which was considerably below its real purchasing power. In other words, the pound was depreciated not by any undue balance of trade, but for political and sentimental reasons. This ought not to be. Any pressure to sell British and buy American securities was not merely unpatriotic, but in his opinion very foolish. He had heard an expert opinion from America which asserted that it would be easy to lose in American investments quite as much as in any capital levy. And it might still be within their recollection that shortly before the war there was an active movement for investment in Continental securities, with the idea of evading income tax—dishonestly, of course. Those who adopted this course burnt their fingers badly, and deserved to do so; they might fairly be held up as a warning to those who were contemplating a similar course now. But however unpatriotic and unwise these weak-kneed folk might be, how infinitely more unpatriotic and unwise would it be to feed the anti-British press in America with panic-mongering, and deliberately to damage the credit and reputation of the country in quarters where such attacks on Britain were cherished and magnified, and spread broadcast over the whole American Continent? There was, as a matter of fact, no panic at present; there was a certain nervousness among the ranks of amateur investors; but it was the duty of those who were in positions of responsibility to look calmly at the facts, apart from any prejudices of personal or political disappointment and resentment. Such a dispassionate view, he was sure, would lead to no counsels of despair. It seemed to him that the convalescence of the country, after the fever of the war and the disastrous destruction which it involved, was proceeding with all the steadiness for which we could reasonably hope; "the patient is doing as well as can be expected," and the need of the day was, as before, for patience, work, and peace.

The Report was unanimously adopted.

Law Students' Journal.

Calls to the Bar.

The following ladies and gentlemen were called to the Bar on Monday:—

Lincoln's Inn.—E. F. O. Swan, Bridgetown, Barbadoes; H. C. J. Peiris, B.A., LL.B., Camb.; E. Marjoribanks, Christ Church, Oxford; W. R. T. Smith, B.A., LL.B., Camb.; J. V. Clinton, B.A. Camb.; A. K. Mitra, B.Sc. Lond.; I. O. C. Martins, FitzWilliam Hall, Cambridge; P. G. R. Whalley, Gonville and Caius College, Cambridge, B.A., LL.B.; C. H. B. Kitchin, B.A. Oxon; M. N. Clarke, B.A. Oxon; S. G. Howard, Balliol College, Oxford; J. A. H. Harries, B.A., Wales; H. G. Morgan, LL.B., Wales; the Hon. D. Meston, of Hurst, Cookham Dene, Berkshire; F. T. Grey, B.A. Oxon, M.B., Sydney.

Middle Temple.—K. O. Roberts-Wray, B.A., Honours, School of Jurisprudence, Class I (Oxon), Certificate of Honour, Bar Final, Hilary Term; A. Drieberg, Colombo, Ceylon; E. E. Colman, B.A., First Class Classical Tripos (Cantab); A. Hutton-Mills, B.A. (Oxon); G. R. Hinchcliffe, B.A. (Cantab); Syed Mohammad Aslam, B.A. (Honours, Jurisprudence—Oxon); Kannambra Sankaran Unni Nair, B.A. (Madras), B.A. (Honours—Oxon); L. E. Stephens, B.A. LL.B. (Cantab); S. M. Noakes, D.S.O., Major, R.F.A.; C. T. Southgate; Ambedas Kashibhai Amin, B.A. (Honours—Bombay), LL.B. (Belfast); Chrystal Macmillan, B.Sc., M.A. (Edinburgh); Mohamed Abdul Rauf; Rita Reuben, LL.B. (Honours—London), L.R.A.M.; Shigetsugu Ito, Tokyo Bar, Japan; Muhammed Lawal Basil Agusto; Nazir Ahmad Lodhi; F. W. Holder, B.A. (2nd Class Honours—Durham); Syed Riaz Ahmed, B.A. (Madras); A. T. Adams; Nallapa Thimma Narayana Reddi, B.A., (Madras); C. E. G. C. Emmott, B.A., Litt. Hum. (Oxon); Huck Lim Ong; F. H. B. Koch, Ceylon.

Gray's Inn.—Mary R. Stevens, Undergraduate, the University of London, holder of a Certificate of Honour, Council of Legal Education, Hilary, 1924; Nai Pravatti, Siamese Government Student; L. J. H. Bradley, B.A., and sometime Taberdar, Queen's College, Oxford; F. R. Ellis, M.C., Administrative Officer, Sierra Leone; Amin Ahmed Chowdhry, B.A., LL.B., Fitzwilliam Hall, Cambridge, M.A., Calcutta University; S. E. Gomes, B.A., Jesus College, Cambridge; Sydney Alice Malone, B.Sc., the National University of Ireland; W. E. Davies, Undergraduate, the University of London; K. H. Bailey, B.A., B.C.L., Corpus Christi College, Oxford, a Rhodes Scholar, Vice-Master, Queen's College, University of Melbourne; E. C. Ormond, of Penmaendyfi, Machynlleth; M. A. Lush, B.A., Christ Church, Oxford; C. G. Brett, of Sherborne Lodge, Murray-road, Wimbledon; H. C. Lush, B.A., Christ Church, Oxford; H. Infield, M.C., B.A., King's College, Cambridge, B.Sc., the University of London; E. M. Drower, C.B.E., formerly a solicitor, Adviser to the Ministry of Justice, Iraq Government, of Baghdad.

Inner Temple.—L. M. Jopling, Corpus Christi College, Oxford, B.A., Indian Civil servant; J. J. Macartney; G. N. Seddon, Clare College, Cambridge, B.A.; C. A. Hooper, University College, London; C. E. R. M. Brooke, Exeter College, Oxford, B.A.; A. H. Jeffreys; V. Priestwood, Keble College, Oxford, B.A.; Srinivasa Raghunatha Rao, Oriel College, Oxford, B.A.; Moussa Faidy Alami, Trinity Hall, Cambridge, B.A., LL.B.; A. C. C. Willway, Oriel College, Oxford, B.A.; F. St. L. Searle, Pembroke College, Cambridge, B.A., LL.B.; D. F. Brundrit, Wadham College, Oxford, B.A.; Mirza Abol Hassan Ispahani, St. John's College, Cambridge, B.A., LL.B.; J. J. Davies, University of Wales, B.A., and London University, B.Sc.; R. G. S. Bankes, Magdalen College, Oxford, B.A.; W. H. Flaherty, Keble College, Oxford, B.A.; D. G. Passmore; E. M. Parsey, St. Peter's College, Cambridge, B.A.; T. C. Humphreys, Trinity Hall, Cambridge, B.A., LL.B.; S. G. G. Edgar, St. John's College, Cambridge, B.A.

The Solicitors' Law Stationery Society, Limited,

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SHORTHAND NOTES

OF CASES TAKEN IN THE HIGH COURT AND IN ARBITRATIONS. COMPANY MEETINGS :: :: REPORTED. :: ::

USUAL CHARGES **LESS 10 PER CENT.** FOR MONTHLY SETTLEMENTS.

The Society's Representative is in constant attendance at the Courts, or instructions may be given at any of the Branches.

Law Students' Debating Society.

At a meeting of the Society held at the Law Society's Hall, on Tuesday, 29th day of January, 1924 (Chairman, Mr. Philip Pitt), the subject for debate was: "That this House disapproves the Policy of the Labour Party." Mr. J. W. Morris opened in the affirmative; Mr. L. A. Wingfield opened in the negative. The following members also spoke: Messrs. W. M. Pleadwell, Raymond Oliver, J. F. Chadwick, V. R. Aronson, R. D. C. Graham, C. P. Blackwell, J. H. G. Buller, J. R. Amphlett and M. C. Batten. The opener having replied, the motion was carried by five votes.

There were nineteen members and two visitors present.

Women, whether qualified or Law Students, are now eligible for membership of the Society, and particulars can be obtained from Mr. John F. Chadwick, 2, Camomile Street, Bishopsgate, E.C.3, Secretary.

Legal News.

Appointments.

The following appointments have been made:—

To be Chief Justice of the Madras High Court: Mr. Justice VICTOR MURRAY COUTTS TROTTER, barrister-at-law, in succession to Sir Walter Schwabe, who has been permitted to resign the appointment, with effect from 15th January.

To be a Puisne Judge of the Patna High Court: Mr. ROBERT LINDSAY ROSS, C.S.I., I.C.S., in succession to Mr. Justice William Strachan Coutts, C.S.I., I.C.S., who has been permitted to resign the appointment, with effect from 23rd February.

Mr. S. H. EMANUEL, K.C., the Hon. E. E. CHARTERIS, K.C., and Mr. G. F. L. MORTIMER, K.C., have been elected Masters of the Bench of the Inner Temple.

Mr. SYDNEY LEADER, of the firm of Messrs. Leader, Plunkett and Leader, St. Paul's-house, 49 and 50, Newgate-street, E.C.1, has been appointed a Commissioner for the High Court of Australia, and also for the Supreme Court of the Bahama Islands.

Dissolutions.

EDWIN ALBERY LUCAS and ALEXANDER BERESFORD, solicitors, Midhurst, in the County of Sussex (Albery, Lucas & Beresford), the 31st day of December, 1923. [*Gazette*, 25th January.

JOHN CARRINGTON and HARRY LEONARD, solicitors, Barnsley, in the County of York (Carrington & Leonard), 31st day of December, 1923, so far as concerns the said Harry Leonard, who retires from the said firm. The said John Carrington will continue to carry on the said business under the style or firm of John Carrington. [*Gazette*, 29th January.

General.

The new Lord President of the Council (Lord Parmoor) presided on Tuesday at the Judicial Committee of the Privy Council on the hearing of an appeal from Nova Scotia. Mr. Upjohn, K.C., on behalf of the Bar, congratulated his Lordship on his appointment. No Lord President of the Council, says *The Times*, has sat on the hearing of appeals to the King in Council for a number of years, although occasionally a Lord President has presided on the hearing of matters specially referred to the Judicial Committee by the Sovereign. The last recorded case of the Lord President's sitting on an appeal would seem to be the famous "Essays and Reviews" suit, which was heard in 1863, when Lord Granville was in the chair—at any rate, during the first day's proceedings. Lord Parmoor has, of course, been a member of the Judicial Committee of the Privy Council for some years. He had been specially appointed a member under s. 1 of the Judicial Committee Act, 1833.

Mr. J. Theodore Dodd, Oxford, writing to *The Times* (25th ult.), says: Mr. Marshall complains that the Court of Appeal in the *Merthyr Tidfil Case*, 1900, 1 Ch. App. 516, "gave the curious decision that, while relief to able-bodied strikers is illegal on any condition, relief may be given to their wives and children." Really there is nothing curious about it. Women and children, though the wives and offspring of strikers, are human beings, and, as such, are entitled, if destitute or necessitous, to relief under 43 Eliz., c. 2; though the husband and father is liable to certain unpleasant consequences. Long before this decision, it was pointed out by the Court in *R.* v. *Shavington*, 17 A. and E., Q.B. 48, 51, that, though for certain purposes relief to the children is to be considered relief to the parents (41 & 5 Will. IV, c. 76, s. 56), yet the relief must still be considered as given to the children also. The fact is that the last-mentioned section does not take away the right of the child; it only increases the obligations of the parent.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.		Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
Monday	Feb. 4	Mr. Synge	Mr. Jolly	Mr. More	Mr. Jolly
Tuesday	5	Ritchie	More	Jolly	More
Wednesday	6	Bloxam	Synge	More	Jolly
Thursday	7	Hicks Beach	Ritchie	Jolly	More
Friday	8	Jolly	Bloxam	More	Jolly
Saturday	9	More	Hicks Beach	Jolly	More

Date.		Mr. Justice Astbury.	Mr. Justice P. O. Lawrence.	Mr. Justice Russell.	Mr. Justice Tomlin.
Monday	Feb. 4	Mr. Bloxam	Mr. Hicks Beach	Mr. Ritchie	Mr. Synge
Tuesday	5	Hicks Beach	Bloxam	Synge	Ritchie
Wednesday	6	Bloxam	Hicks Beach	Ritchie	Synge
Thursday	7	Hicks Beach	Bloxam	Synge	Ritchie
Friday	8	Bloxam	Hicks Beach	Ritchie	Synge
Saturday	9	Hicks Beach	Bloxam	Synge	Ritchie

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert Valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-à-brac a speciality. [ADVT.]

A UNIVERSAL APPEAL

TO LAWYERS: FOR A POSTCARD OR A GUINEA FOR A MODEL FORM OF BEQUEST TO THE HOSPITAL FOR EPILEPSY AND PARALYSIS, MAIDA VALE, W.

THE MIDDLESEX HOSPITAL.

WHEN CALLED UPON TO ADVISE AS TO LEGACIES, PLEASE DO NOT FORGET THE CLAIMS OF THE MIDDLESEX HOSPITAL, WHICH IS URGENTLY IN NEED OF FUNDS FOR ITS HUMANE WORK.

Winding-up Notices.

JOINT STOCK COMPANIES.
LIMITED IN CHANCERY.

CREDITORS MUST SEND IN THEIR CLAIMS TO THE LIQUIDATOR AS NAMED ON OR BEFORE THE DATE MENTIONED.

London Gazette.—FRIDAY, January 25.

BRITISH PYRO PRODUCTS LTD. Feb. 29. A. J. Adams, National-bldgs., St. Mary's Parsonage, Manchester.
ANGLO-AMERICAN THEATRICAL SYNDICATE LTD. March 4. A. MacGregor, 25, Bedford-row.
BRADWIN, CLARK & CO. LTD. Feb. 15. R. Howie Porter. 126, Friars House, Austin Friars, E.C.2.
ARCADIAN MANUFACTURING CO. LTD. Feb. 29. Alfred. Dobson, Post Office House, Leeds.
NORTH EASTERN PITWOOD ASSOCIATION LTD. Feb. 22. John Benson, 27, Grey-st., Newcastle-upon-Tyne.
AUTO FACTORS LTD. Feb. 14. B. A. Smith, Liquidator.
THE ROCKPORT LAMP CO. LTD. Feb. 29. W. P. Masterson, Bank of England Chambers, Tib-lane, Manchester.

Resolutions for Winding-up Voluntarily.

London Gazette.—FRIDAY, January 25.

Venture-Walker & Co. Ltd.
Gillan Brothers Ltd.
Cortone Ltd.
Malabar Oil Extraction Co. Ltd.
Carlton Piggeries Ltd.
J. J. Shore & Co. Ltd.
Schwatz & Glicher Ltd.
Rosherville Gardens Ltd.
George Warwick Ltd.
Società Di Pertusola Ltd.
Waring & Gillow (Paris) Ltd.
Knapp & Thornton Ltd.
Basden Abbey Ltd.
Mountney Ltd.
Auto-Ticket Printing Co. Ltd.
Motor Transport & Clearing Houses Ltd.
Carlton Building and Decorating Co. Ltd.
London Welsh Steamship Co. Ltd.
W. G. Nixey Ltd.
Bevan, Churchill & Co. Ltd.
East London Mica Co. Ltd.
Direct Meat Supply Co. Ltd.
Clark Brothers & Smith Ltd.

London Gazette.—TUESDAY, January 29.

Ali Motor and Engineering Co. Ltd.
South Coast Tourist Co. Ltd
Hewitt Fletcher Smith Ltd.
Deacon Stevens Ltd.
Hobbs Manufacturing Co. Ltd.
Brierley's Premier Welding Co. Ltd.
The Kempshall Tyre Co. of Europe Ltd.
Redfern Ltd.
H. O'Brien & Co. Ltd.
Morning Star Sick and Burial Society.
Austin and Son (Nechells) Ltd.
Rising Sun Shoe Works Ltd.
Spratt & Young Ltd.
Andover Entertainments Co. Ltd.
Thomas Raynes & Son Ltd.
Oscar Crane & Co. Ltd.
Brimrod United Methodist Church Sick and Burial Society.
Palace Theatre (Ebbw Vale) Ltd.
H. Haydon & Co. Ltd.
Flintham, Hall & Co. Ltd.
Santa Claus Ltd.
Father Christmas Ltd.
Autokee Motor Engineering Co. Ltd.

Bankruptcy Notices.

RECEIVING ORDERS.

London Gazette.—FRIDAY, January 25.

ABERNETHY-ROUTE, REGINALD, Basil-st., Knightsbridge. High Court. Pet. Nov. 7. Ord. Jan. 19.
ANDREWS, SIDNEY G., Charlbury, Oxford, Greengrocer. Oxford. Pet. Jan. 23. Ord. Jan. 23.
BALDWIN, VICTOR, Newton Abbot. Exeter. Pet. Nov. 27. Ord. Jan. 18.
BENWICK, EDWARD J., Earl's Court. High Court. Pet. Dec. 17. Ord. Jan. 22.
BOYES, WILLIAM H. F., Henley-on-Thames, Coach Builder. Reading. Pet. Jan. 17. Ord. Jan. 17.
BOAST, HARRY J., Reedham, Norfolk, Coal Merchant. Great Yarmouth. Pet. Jan. 22. Ord. Jan. 22.
BROCKLESBY, GEORGE H., Great Grimsby. Great Grimsby. Pet. Jan. 23. Ord. Jan. 23.
BURDEN, FRANK, Kelsall, Chester, Poultry Appliance Dealer. Chester. Pet. Jan. 21. Ord. Jan. 21.
BURT, FREDERICK, Bristol, Tobacconist. Bristol. Pet. Jan. 21. Ord. Jan. 21.
CAMPBELL, THOMAS H., Gracechurch-st. High Court. Pet. March 3. Ord. Jan. 22.
CARR, ALFRED, Leek, Staffs, Watch Repairer. Macclesfield. Pet. Jan. 21. Ord. Jan. 21.
CARTER, WILLIAM, Marwood, near Melton Mowbray, Farmer. Leicester. Pet. Jan. 23. Ord. Jan. 23.
CLARK, SAMSON, Sydenham. Greenwich. Pet. Dec. 10. Ord. Jan. 22.
CLAYDEN, JOHN W., Pontefract, Milk Dealer. Wakefield. Pet. Jan. 19. Ord. Jan. 19.
COPP, THOMAS B., and MILLS, HERBERT E. M., Caerphilly, Caterers. Cardiff. Pet. Jan. 18. Ord. Jan. 18.
DERRICK, ELIZABETH A., Neath, Fruiterer. Neath. Pet. Jan. 22. Ord. Jan. 22.
FRANCIS, JANE, and FRANCIS, WILLIAM H., Kerry, Montgomery. Newtown. Pet. Jan. 21. Ord. Jan. 21.
GUEST, WALTER, Bury, Licensed Victualler. Bolton. Pet. Jan. 21. Ord. Jan. 21.
HODGSON, GEORGE A., Sale. Manchester. Pet. Jan. 23. Ord. Jan. 23.
HOWARD, VINCENT, Neath, Medical Superintendent. Neath. Pet. Nov. 20. Ord. Jan. 21.
HUDDLESTON, J. T., Deighton, near Northallerton, Farmer. Northallerton. Pet. Jan. 15. Ord. Jan. 22.
JACKSON, FREDERICK W., Great Yarmouth, Boarding-house Proprietor. Great Yarmouth. Pet. Nov. 7. Ord. Jan. 21.
JACKSON, HERBERT, Heanor, Derby, Motor Engineer. Derby. Pet. Jan. 21. Ord. Jan. 21.
LEES, HERBERT J., Ipswich, House Decorator. Ipswich. Pet. Jan. 22. Ord. Jan. 22.
LEIGH, HERBERT, Ashton-under-Lyne, Property Repairer. Ashton-under-Lyne. Pet. Jan. 22. Ord. Jan. 22.
MCCREAGH, MICHAEL C., Dover-st., Barrister-at-Law. High Court. Pet. July 19. Ord. Nov. 21.
MARKS, ASHER D., Finsbury Park, Commercial Traveller. High Court. Pet. Jan 3. Ord. Jan. 23.
NEWMAN, THOMAS P., Ipswich, Commercial Traveller. Ipswich. Pet. Jan. 15. Ord. Jan. 15.
PARKER, JOSEPH, Woodhouse Mill, near Sheffield, General Dealer. Sheffield. Pet. Jan. 21. Ord. Jan. 21.
PORDAGE, WALTER, Gillingham, Kent, Haulage Contractor. Rochester. Pet. Jan. 23. Ord. Jan. 23.
RHODES, EMMA, Castleford, Yorks, Draper. Wakefield. Pet. Jan. 23. Ord. Jan. 23.
ROBSON, THOMAS W., Sunderland, Glass and China Dealer. Sunderland. Pet. Jan. 21. Ord. Jan. 21.
RUSSELL, HENRY F. R., Twickenham. Brentford. Pet. Nov. 3. Ord. Jan. 18.
SACKS, MORRIS, Oldham, Clothier. Manchester. Pet. Jan. 9. Ord. Jan. 22.
SCHAUFELBERG, E., Lancaster Gate, Architect. High Court. Pet. Dec. 18. Ord. Jan. 10.
SELLICK, FRANCES M., Weston-super-Mare, Tailor. Bridgwater. Pet. Jan. 22. Ord. Jan. 22.
SIMS, WILLIAM W., and SIMS, ROY W., Corsley, Wilts. Builders. Frome. Pet. Jan. 22. Ord. Jan. 22.
SYDNEY, R., Piccadilly, W.1. High Court. Pet. Oct. 1. Ord. Jan. 21.
TAYLOR, JOHN S., Manchester, Cinema Furnisher. Manchester. Pet. Dec. 18. Ord. Jan. 22.
TEW, HERBERT, Leamington, Licensed Victualler. Warwick. Pet. Jan. 21. Ord. Jan. 21.
TOBIN, GEORGE R. M., and TOBIN, MARION, Brighouse, Joiners, Undertakers. Halifax. Pet. Jan. 21. Ord. Jan. 21.
TODD, MARK, Shipley, General Dealer. Bradford. Pet. Jan. 21. Ord. Jan. 21.
WHEATLEY, OSCAR, Romford, Builder. Chelmsford. Pet. Jan. 21. Ord. Jan. 21.
YEADON, CHARLES E., Bradford, Boot Repairer. Bradford. Pet. Jan. 22. Ord. Jan. 22.

Amended Notice substituted for that published in the *London Gazette* of Jan. 4, 1924 :—

KNURLEY, ALLAN, Portsmouth. Portsmouth. Pet. Dec. 1. Ord. Dec. 21.

RECEIVING ORDERS.

London Gazette.—TUESDAY, January 29.

ADAMS, LOUIS, Battersea, Insurance Broker. Wandsworth Pet. Jan. 1. Ord. Jan. 24.
AIREY, ALFRED, Middlesbrough, Grocer. Middlesbrough. Pet. Jan. 23. Ord. Jan. 23.
AMIEL, ISAAC, Mile End-rd., E., Wholesale Confectioner. High Court. Pet. Jan. 24. Ord. Jan. 24.
BALDWIN, EDWIN T., Tipton, Chain Manufacturer. Dudley. Pet. Jan. 24. Ord. Jan. 24.
BARNES, GRACE G., Uxbridge, Private Hotel Proprietor. Windsor. Pet. Jan. 23. Ord. Jan. 23.
BARTON, JOHN S., GOODALL, FREDERICK, and OWEN, DORIS, Manchester, Hosiery Merchants. Manchester. Pet. Jan. 25. Ord. Jan. 25.
BAYBUTT, JOHN, Harrogate, Insurance Agent. Harrogate. Pet. Nov. 1. Ord. Jan. 24.
BEBBINGTON, WILLIAM, Childs Ercall, Salop. Nantwich. Pet. Jan. 25. Ord. Jan. 25.
BROOKES, ERNEST, Coventry, Boot Dealer. Coventry. Pet. Jan. 24. Ord. Jan. 24.
BUTTERWORTH, JOHN T., Barnoldswick, Motor and Cycle Repairer. Bradford. Pet. Jan. 26. Ord. Jan. 26.
CAUDLE, HARRY, Sheffield, Furniture Dealer. Sheffield. Pet. Jan. 24. Ord. Jan. 24.
CLAPTON, MARK, Kencott, Oxford, Farmer. Oxford. Pet. Jan. 22. Ord. Jan. 25.
DAVIES, EDGAR V., Caerleon, Mon., Engineer. Newport (Mon.). Pet. Jan. 25. Ord. Jan. 25.
DOBSON, HARRY, Halifax, Farmer. Halifax. Pet. Jan. 26. Ord. Jan. 26.
GRIFFITHS, DAVID, Ferndale, Colliery Surface Haulier. Pontypridd. Pet. Jan. 25. Ord. Jan. 25.
HARRISON, CHARLES, Leeds, Publican. Leeds. Pet. Jan. 24. Ord. Jan. 24.
JONES, DAVID O., and JONES, MARGARET O., Carnarvon, Travelling Drapers. Bangor. Pet. Jan. 25. Ord. Jan. 25.
JURY, CHARLES E., Buckingham Gate. High Court. Pet. Dec. 29. Ord. Jan. 23.
LEWIS, CHARLES H., and JEFFERY, FRANCIS A., Stoke-on-Trent. Hanley. Pet. Jan. 24. Ord. Jan. 24.
LILLEY, W. SENIOR, Mount-st., Estate Agent. High Court. Pet. Nov. 19. Ord. Jan. 9.
LOVERIDGE, LIZZIE M., Copnor, Portsmouth, Greengrocer. Portsmouth. Pet. Jan. 21. Ord. Jan. 21.
MABBETT & EDGE, Mount-st., Mayfair. High Court. Pet. Dec. 10. Ord. Jan. 9.
MAUNDER, Captain S. T. L., Clement's Inn. High Court. Pet. Dec. 7. Ord. Jan. 23.
MELLOR, JOSEPH, Oldham, Butcher. Oldham. Pet. Jan. 25. Ord. Jan. 25.
OGDEN, JOHN P., Saddleworth, Yorks. Oldham. Pet. Jan. 24. Ord. Jan. 24.
OSBORN, JOSEPH H. A., Bow, Devon, Timber Merchant, Exeter. Pet. Jan. 22. Ord. Jan. 22.
PALMER, FRANK, Almeley, Hereford, Poultry Farmer. Leominster. Pet. Jan. 24. Ord. Jan. 24.
PEARSON, JOHN R., Sunderland, Wholesale Confectioner. Sunderland. Pet. Jan. 24. Ord. Jan. 24.
PEEL, ABBIS, Ferndale, Painter. Pontypridd. Pet. Jan. 25. Ord. Jan. 25.
PERONI, ALBERT E., Bayswater. High Court. Pet. June 29. Ord. Jan. 24.
PICKLES, GEORGE A., Horbury, Yorks, Wardrobe Dealer. Wakefield. Pet. Jan. 24. Ord. Jan. 24.
PIRIE, ALEXANDER, Golders Green. High Court. Pet. Nov. 28. Ord. Jan. 24.
RAPER, HENRY A., Quorn, Leicester, Grocer. Leicester. Pet. Jan. 24. Ord. Jan. 24.
RICHARDS, HUBERT D. F., Gloucester, Travelling Clothier. Gloucester. Pet. Jan. 26. Ord. Jan. 26.
SAUNDERS, MORRIS, Dalston, Silk and Woollen Merchant. High Court. Pet. Jan. 24. Ord. Jan. 24.
SCHOLEY, WALTER, Leeds, Advertising Contractors' Traveller. Leeds. Pet. Jan. 25. Ord. Jan. 25.
SPICER, SAMUEL E., Worcester, Builder. Worcester. Pet. Jan. 26. Ord. Jan. 26.
SUTTON, ARTHUR, Horncastle, Poultry Dealer. Lincoln. Pet. Jan. 25. Ord. Jan. 25.
SWEETLAND, WILLIAM T., Yarcombe, Devon, Builder. Exeter. Pet. Jan. 24. Ord. Jan. 24.
TAYLOR, ROBERT S., Birmingham, Insurance Commission Agent. Birmingham. Pet. Jan. 25. Ord. Jan. 25.
TOBIAS, H., Coke-st., E.1, Builder. High Court. Pet. Jan. 4. Ord. Jan. 24.
TOGNI, CARLO, Old Compton-st., Wine and Provision Merchant. High Court. Pet. Dec. 17. Ord. Jan. 24.
TRUELUFF, ERNEST E., Bridgwater, Hairdresser. Bridgwater Pet. Jan. 26. Ord. Jan. 26.
VERNON, JAMES H., Bewley, Worcester. Birmingham. Pet Oct. 30. Ord. Jan. 25.
VYSE, WILLIAM, Consett, Durham, Fish Dealer. Newcastle-upon-Tyne. Pet. Jan. 21. Ord. Jan. 21.
WALSH, EDWARD C., Milford Haven. Haverfordwest. Pet. Jan. 11. Ord. Jan. 25.
WHEATLEY, EDGAR, Beeston, Notts., General Dealer. Nottingham. Pet. Jan. 24. Ord. Jan. 24.
WILDMAN, WILLIAM F., Walthamstow. High Court. Pet. Dec. 11. Ord. Jan. 24.

Amended Notice substituted for that published in the *London Gazette* of Oct. 16, 1923 :—

KOTCHOUBEY, H. S. H. Prince EUGENE, Devonport-st., W. High Court. Pet. April 20. Ord. Oct. 10.

Amended Notice substituted for that published in the *London Gazette* of Jan. 22, 1924 :—

CADWALLADER, DENNIS W., Brompton, Salop, Farmer. Newtown. Pet. Jan. 18. Ord. Jan. 18.

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